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No. 90- ___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

GREENVILLE PUBLIC SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

HOLMES S. ADAMS
PERRY SANSING
(Counsel of Record)
BRUNINI, GRANTHAM, GROWER & HEWES
1400 Trustmark Building
Post Office Drawer 119
Jackson, Mississippi 39205
(601) 948-3101

CLELL G. WARD
MCLEMORE & WARD
525 North Broadway
Post Office Box 575
Greenville, Mississippi 38701
(601) 332-4155

Counsel for Petitioners

June 3, 1991

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTIONS PRESENTED

1. Whether the Attorney General can be deemed to have precleared under § 5 of the Voting Rights Act a voting change effected by the repeal of a statute when the voting change was neither (a) specifically identified or explained in the State's submission of other related voting changes nor (b) actually evaluated or considered by the Attorney General?

2. Whether the express preclearance by the Attorney General of a voting change results in the preclearance by implication of another voting change because under state rules of statutory construction the two statutes containing the voting changes are "clearly inconsistent"?

PARTIES TO THE PROCEEDING BELOW

In addition to the two school districts, the school board members from each district were named in their official capacities as parties to the proceedings below.

Greenville Public School District:

Mary Haynes
Carolyn Morris
Ann Brent
Roy Campbell, III
John Richards

Western Line Consolidated School District:

Ruby Slade
Dot Gilder
Tootie Trotter
Clarence Hall, Jr.
Martha Carroll

During the course of these proceedings, Ann Brent and Roy Campbell, III, were replaced on the board of the Greenville Public School District by Robert Jones and Jerome C. Hafter.

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OPINIONS BELOW

The opinion of the Mississippi Supreme Court is reported at 575 So. 2d 956 (Miss. 1990). It is reprinted in the Appendix at 1a-21a.

The decision of the Circuit Court of Washington County was not reported. It is reprinted in the Appendix at 24a-26a.

JURISDICTION

The opinion of the Mississippi Supreme Court was issued on December 12, 1990. A timely petition for rehearing was denied on March 6, 1991. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

42 U.S.C. § 1973c

This statute is reprinted in App. O, 179a-180a.

28 C.F.R. § 51.25 (1986)

This regulation is reprinted in App. P, 181a-182a.

28 C.F.R. § 51.35 (1986)

This regulation is reprinted in App. Q, 183a.

Miss. Code Ann. § 37-7-611 (1972)

This statute is reprinted in App. G, 109a-111a.

Miss. Code Ann. § 37-7-103 (1972 & Supp. 1990)

The two versions of this statute are set forth in App. F, 76a-77a.

Miss. Code Ann. § 37-7-113 (1972 & Supp. 1990)

The two versions of this statute are set forth in App. F, 87a-88a.

HOW THE FEDERAL QUESTION WAS PRESENTED

In the state courts, the Petitioners sought a determination that Miss. Code Ann. § 37-7-611 (1972) governed the location of the boundaries of the Greenville and Western Line school districts after the City of Greenville annexed portions of both school districts. Section 37-7-611 required the automatic extension of a municipal school district's boundaries when its parent municipality annexed territory in an adjoining school district. In 1986, as part of a massive revision of Mississippi's education law, the egislature repealed § 37-7-611 by enacting the Uniform School Law.

The Respondents, the Defendants below, argued that Miss. Code Ann. § 37-7-103 (Supp. 1990), which had been amended by the Uniform School Law, governed the school districts' boundaries after the annexation. As amended, § 37-7-103 permits school district boundaries to be altered only by agreement of the districts involved. In deciding the question whether § 37-7-611 or § 37-7-103 controlled

the post-annexation boundaries of the two school districts, the state courts exercised the authority granted by *Hathorn v. Lovorn*, 457 U.S. 255 (1982), to decide collateral issues implicating the Voting Rights Act.

Specifically, the federal question arose because of the disputed preclearance status of the repealer of § 37-7-611. The State had submitted the Uniform School Law to the Attorney General for preclearance but did not specifically identify or explain the voting change effected by the repeal of § 37-7-611. The amendment to § 37-7-103 was properly submitted and precleared. The State later submitted the repeal of § 37-7-611 for preclearance, and the Attorney General interposed an objection.

If the repealer of § 37-7-611 were ineffective because it had not been precleared, the boundaries of the Greenville city school district would automatically expand to encompass the new boundaries of the City of Greenville. If the repeal of § 37-7-611 had been precleared, however, the amended (and precleared) version of § 37-7-103 would govern, and the boundaries of the Greenville and Western Line school districts could be altered only by agreement. The state courts were required to review Mississippi's § 5 submissions of the repealer of § 37-7-611 and the Uniform School Law.

STATEMENT OF THE CASE

In January 1988, the Petitioners, the Greenville Public School District and its five board members, filed this action in the Circuit Court of Washington County, Mississippi, against the Respondents, the Western Line Consolidated School District and its five board members.[1] The Petitioners

[1] The Greenville city school district is organized under Mississippi law as a municipal school district with added territory. The boundaries of the district consist of the entire City of Greenville plus territory contiguous to the city. *See* Miss. Code Ann. § 27-33-11(c) (Supp. 1990); *id.* § 37-6-3(2)(b). The board members of the city school district are appointed by the city council, who are in turn elected by the residents of the city. *Id.* § 37-7-203 (1990). Mississippi law allows residents of

sought a declaratory judgment concerning the applicability of Miss. Code Ann. §§ 37-7-611 and 37-7-103 to a dispute regarding the boundaries of the two school districts as the result of an annexation by the City of Greenville. App. 29a-31a.[2]

At the conclusion of the annexation proceedings, the city's boundaries extended into a portion of the Western Line school district. The dispute between the two school districts centered on whether under Mississippi law the Greenville city school district's boundaries included the suburban property in the Western Line district annexed by the city.

From 1926 to 1986, Mississippi law provided that when the boundaries of a municipality were extended by annexation to include territory of an adjacent school district,

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the added territory of a municipal school district to elect either one or two board members depending on the percentage of students residing in the added territory. *Id.*

The Western Line School District is a consolidated school district, which is defined as a school district other than a municipal school district and county-wide school district and includes territory in more than one county. *In re 2,952 Registered Voters*, 574 So. 2d 619, 624 (Miss. 1990). The Western Line district is located in Washington County and neighboring Issaquena County, and its boundaries generally surround Greenville on the north, east and south. The Mississippi River serves as the city's western boundary. *See Mississippi v. Arkansas*, 415 U.S. 289 (1974) (map of area attached as exhibit to Court's decision). Western Line is essentially a suburban school district, and its board members are elected by the residents of the consolidated school district. Miss. Code Ann. § 37-7-207 (1990).

[2] After protracted litigation, the Mississippi Supreme Court approved the annexation in 1987. *See City of Greenville v. Farmers, Inc.*, 513 So. 2d 932 (Miss. 1987); *Western Line Consol. School Dist. v. City of Greenville*, 465 So. 2d 1057 (Miss. 1985); *see also Western Line Consol. School Dist. v. Greenville Mun. Separate School Dist.*, 433 So. 2d 954, 958 (Miss. 1983) (residents in portion of Western Line school district subject to annexation had no right to vote on whether to become part of city school district). The area annexed included virtually all of the added territory of the Greenville city school district and suburban property located in the Western Line school district. After initially objecting to the annexation, the Attorney General granted preclearance on February 11, 1990. App. 4a-5a.

the annexed portion of the adjacent school district automatically merged into the municipal school district. *See* Miss. Code Ann. § 37-7-611 (1972); Miss. Code § 6670 (1930).[3]

In 1986, the Mississippi Legislature enacted the Uniform School Law, which was designed to provide Mississippi with a common system of school administration. The Law affected virtually every aspect of a school district's operations, including student assignment and transportation, teacher certification requirements, school finances, authority of school superintendents, procedures relating to election referenda in the area of taxation and bonded indebtedness and alteration of school district boundaries. App. 35a.[4] Section 47 of the Uniform School Law repealed

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[3] Section 37-7-611 also contains provisions concerning the effect of an annexation that occurred after the school year had begun or that included or excluded school buildings of an adjoining district. In addition, this section permits the municipal school district and the county school district to agree to extend the municipal school district boundaries beyond the newly created municipal boundaries. The agreement requires approval by the State Educational Finance Commission.

In 1977, the legislature created an exception to § 37-7-611 by amending Miss. Code Ann. § 21-1-59 (Supp. 1990) to provide that the extension by annexation of a municipality's boundaries across a county line would not affect the school district in the annexed area unless that school district consented to be included in the municipal school district.

The 1977 amendment to § 21-1-59, however, was not submitted for preclearance until 1990, and the Attorney General interposed an objection on May 25, 1990. *See Dupree v. Mabus*, No. H90-0043(W), slip op. at 30 (S.D. Miss. Apr. 2, 1991) (three-judge court). Thus, the 1977 amendment to § 21-1-59 is unenforceable. *Id.* at 31.

The three-judge court in *Dupree* also addressed the effect of the repeal of § 37-7-611 on the boundaries of the Hattiesburg, Forrest County and Lamar County school districts because of annexations by the City of Hattiesburg into Forrest and Lamar Counties. The three-judge court in *Dupree* issued an opinion on April 2, 1991 and, like the Mississippi Supreme Court in the instant case, held that the repeal of § 37-7-611 had been precleared by the Attorney General.

A notice of appeal to this Court has been filed in *Dupree*. The appeal presents the issue addressed in Part I of this Petition.

[4] The court below mistakenly referred to the 1986 enactment as the

§ 37-7-611 and twenty-two other statutes that dealt with the creation and operation of municipal school districts. App. 75a.

The Uniform School Law also amended §§ 37-7-103 and 37-7-113. Prior to 1986, § 37-7-103 permitted a county board of education to abolish the boundaries of any school district in the county except a municipal school district. With the consent of the municipal school district, the county board of education could add to the municipal school district any part of the county adjoining the municipal school district or detach territory from the municipal school district and annex it into a district in the county school system.[5] Section 37-7-103 now provides that all school districts have the authority previously conferred on county boards of education. App. 76a-77a.

Before 1986, when a county board of education exercised its authority under § 37-7-103, § 37-7-113 required the changes to be submitted to the State Educational Finance Commission for approval. The amended version of § 37-7-113 requires all school boards to submit proposed boundary changes to the State Board of Education, which succeeded to the powers of the State Educational Finance Commission. App. 87a-88a.

Prior to 1986, the long standing policy in Mississippi required that the boundaries of a municipal school district be, at a minimum, coterminous with its parent city.[6] The residents of the city would, therefore, always be residents

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Education Reform Act, which was passed in 1982. App. 2a, 5a, 9a, 35a.

[5] Prior to 1986, the county board of education had authority over consolidated school districts and line consolidated school districts. *See* Miss. Code Ann. § 37-7-3 (1972) (repealed by Uniform School Law, ch. 492, § 51, 1986 Miss. Laws 710); Miss. Code Ann. § 37-7-801 (1972) (repealed by Uniform School Law, ch. 492, § 49, 1986 Miss. Laws 710).

[6] By having "added territory" the boundaries of some municipal school districts, like Greenville, included the entire city plus added territory contiguous to the city. *See supra* n.1.

of the city school district. The repeal of § 37-7-611 fundamentally altered this policy. After 1986, a city school district's boundaries would not automatically expand to include the area annexed by its parent city. As a result, residents of the area annexed by the city would not necessarily be residents of the city school district; they could remain residents of the county, or suburban, school district. These newly annexed residents would continue to elect directly the board members of their suburban school district, and they would indirectly select the board members of the city school district by voting for the city council.[7]

The Governor of Mississippi signed the Uniform School Law on April 15, 1986, and the State submitted it to the Attorney General for preclearance on July 22, 1986. App. 32a-46a. The submission consisted of a one-page cover letter, a thirteen-page document containing information ar-

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[7] In his March 31, 1989, objection to the repeal of § 37-7-611, the Attorney General noted "a demographic trend toward the movement of whites out of the cities into suburban and rural areas while blacks are moving from the rural areas of the state into the cities." This pattern appeared to "play a significant role in the opposition to annexations by school districts that neighbor a municipal district since we have noted specific recent annexation disputes where a principal issue has been opposition by predominantly white areas to transferring their students into a majority black school system." The "long term effect" of the repeal of § 37-7-611 "appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner." App. 140a-141a.

This controversy has spawned litigation in state court, *see infra* n.20, and in federal court, *see Nickles v. Western Line Consol. School Dist.*, No. GC90-45-B-O (N.D. Miss. filed Feb. 22, 1990); *Prentiss County Annexation Comm. v. Mabus*, No. EC90-04-S-D (N.D. Miss. filed Jan. 5, 1990); *Dupree v. Mabus*, No. H90-0043(W) (S.D. Miss. Apr. 2, 1991). In the light of the Attorney General's concerns, the significance of the Mississippi Supreme Court's decision is obvious: it enforces the repeal of the policy requiring the automatic expansion of the boundaries of a city school district when its parent city annexes territory in a suburban school district.

ranged in accordance with the Department of Justice regulations governing § 5 submissions and three other documents:

(1) A typescript copy of the entire Uniform School Law, which consisted of 205 sections. The Law was 173 legal-sized pages in length and contained 5,569 lines of type. The language added to existing code sections was underlined, and language deleted from existing statutes was denoted by check marks;

(2) A copy of the tally sheets reflecting the votes of the state legislators; and

(3) A 467-page looseleaf booklet titled "Senate Bill 2117 - Comparison of Current Law and New Law," which contained the typed version of the bill interspersed with photocopied pages of the then-current statute amended by particular sections of the Uniform School Law. App. 47a-108a.[8]

In 1986, the regulations governing § 5 submissions to the Attorney General mandated that a copy of the enactment embodying the voting change be provided. 28 C.F.R. § 51.25(a) (1986). App. 181a. In addition, the regulations required that if the voting change was not "readily apparent on the face of the document provided under" § 51.25(a), the submission should contain "a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or ex-

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[8] The one-paragraph "Introductory Note" to the looseleaf booklet stated that the booklet provides "on a section by section basis each section of the current law which has been amended followed by each individual section of" the Uniform School Law. If a section of the Uniform School Law creates "new law then only those particular sections will be denoted with no comparison of current law." The Note further stated that "[t]his section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law." The Note concluded as follows: "By comparing each section of [the Uniform School Law] and the current practice, the changes to current law are easily identified." App. 47a.

planatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting." *Id.* at § 51.25(b). App. 181a. The regulations did not require the submitting jurisdiction to provide a copy of the prior law being repealed or amended.[9]

The State characterized its submission as follows:

> This submission is cited as the "Mississippi Uniform School Law of 1986" and is submitted to the Attorney General of the United States in its entirety. . . . For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review. [App. 35a.]

The State then specifically identified thirteen of the 205 sections of the Uniform School Law.[10] In discussing the sections, the State contrasted the new law with the then-present law. Section 47, which repealed § 37-7-611, and § 57, which amended § 37-7-113, were not identified and were not referred to anywhere in the thirteen-page submission. Section 52, which amended § 37-7-103, was specifically identified and discussed. App. 37a. The discussion of § 52 consisted of a paraphrase of the then-current statute and the amended version. Sections 47 and 57 appear, without explanatory comment from the State, in the typescript copy of the Uniform School Law and in the loose-leaf booklet.[11]

The Attorney General received the submission on July 23, 1986, and responded on August 29, 1986. He did "not

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[9] That requirement is presently codified at 28 C.F.R. 51.27(b) (1990).

[10] The sections identified were 9, 25, 52-56, 153, 163, 164, 170, 185 and 203. These sections, along with §§ 47 and 57, are set forth in App. F, 47a-108a.

[11] Although the "Introductory Note" to the booklet indicated that a copy of the current law would be provided only if it was *amended* by the Uniform School Law, the State did provide copies of statutes repealed by §§ 189 and 195 of the Uniform School Law.

interpose any objection to the voting changes occasioned by [the Uniform School Law] *as identified in your July 22, 1986 letter.*" App. 112a (emphasis added). The voting change effected by the repeal of § 37-7-611, however, was not specifically identified or explained in the submission and was not precleared. The State acknowledged that the status of § 37-7-611 remained unclear after the Attorney General's response, App. 147a, and conceded before the Mississippi Supreme Court that its July 1986 submission contributed to the uncertainty surrounding the status of § 37-7-611.[12]

In recognition of the absence of the preclearance of § 47 of the Uniform School Law, the State submitted § 47 to the Attorney General for review on December 30, 1987. App. 114a-124a.[13] In its submission of § 47, the State acknowledged the entire Uniform School Law had not been precleared by virtue of the Attorney General's August 29, 1986 letter. In summarizing the purposes of the Uniform School Law, the State explained that the "*major part of* [the Uniform School Law], as it deals with the Voting Rights Act . . . has already been precleared . . . ." App. 117a (emphasis added). The State noted not only that the entire Uniform School Law had not been precleared but also that the repealer of § 37-7-611 affected voting:

> Any indirect changes in the electoral procedure or process repealed by Section 47 are contained

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[12] The uncertainty was due in part to the State's discussion in its submission of thirteen (13) sections of [the Uniform School Law], even though the State cautioned that these were being set out for brevity sake and that the [Law] was being submitted in its entirety. The Attorney General's August 29, 1986, letter seemed to preclear only the sections that were specifically discussed.

Amicus Curiae Brief of State of Mississippi, at p. 4.

[13] Section 47 was the third specific section of the Uniform School Law submitted for preclearance by the State after it received the Attorney General's August 29, 1986, response. On April 30, 1987, the State submitted §§ 60 and 84 for preclearance. The Attorney General did not interpose an objection to these two sections. App. 147a.

> as new legislation in the other sections of [the Uniform School Law], *most of which* have already been precleared by the United States Justice Department. Section 47 is simply a house cleaning measure for [the Uniform School Law]. [App. 119a-120a (emphasis added).]

Later in the submission, the State pointed out that a lawsuit had been filed challenging certain portions of the Uniform School Law, including the repealer of § 37-7-611. "However, since the filing of the suit *substantive parts* of [the Uniform School Law] have been precleared by the Justice Department on August 29, 1986." App. 120a (emphasis added).

On February 28, 1988 the Attorney General requested additional information concerning the repeal of § 37-7-611. App. 125a.[14] Almost a year later, on January 27, 1989, the State responded and again acknowledged that the Uniform School Law had not been precleared in its entirety. The State began its response by summarizing the submission history of the Uniform School Law.

> On July 22, 1986, the State of Mississippi submitted [the Uniform School Law] for preclearance under Section 5 of the Voting Rights Act. . . . On August 29, 1986, [the Uniform School Law] was precleared under Section 5 *as to the particular sections identified in our July 22, 1986 submission.*
>
> On December 30, 1987, the State of Mississippi submitted [the repealer of § 37-7-611] since [it]

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[14] On May 5, 1988, shortly after the Attorney General requested additional information, the trial court issued its final judgment. App. 24a-26a. As a result, the significant factual developments occurring after this date were brought to the attention of the state supreme court by supplementing the record on appeal. Despite being made aware of the submission of the repeal of § 37-7-611, App. 29a, the trial court effectively held that the repealer would be enforceable pending a "definitive" ruling by the Attorney General or the state supreme court. App. 25a.

> was *not specifically identified* in our original submission. [App. 130a (emphasis added).]

After receiving the State's additional information on January 30, 1989, the Attorney General interposed an objection to the repeal of § 37-7-611 on March 31, 1989.[15]

On January 12, 1990, the State formally sought reconsideration of the Attorney General's limited preclearance of the Uniform School Law or, alternatively, the objection interposed to the repeal of § 37-7-611. App. 143a-172a. In the reconsideration request, the State for the first time argued that the entire Uniform School Law had been submitted and precleared in 1986. App.148a-149a. On May 25, 1990, the Attorney General rejected the State's position.

> At the outset, we note that the state makes several claims about the preclearance status of the instant changes which appear to seriously misconstrue the structure, purpose, and history of the preclearance requirement. . . .
>
> Section 5, as interpreted by the courts and our submission guidelines, plainly fixes the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing in both instances that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made. [App. 174a-175a.]

Against this backdrop, the Mississippi Supreme Court affirmed in part and reversed in part the trial court's de-

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[15] The Attorney General concluded the repeal of § 37-7-611 would likely "create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board." The State did not provide a rationale for the creation "of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters." App. 141a.

cision to grant Western Line's motion for summary judgment and deny the relief sought by the Greenville school district.[16]

After reviewing the submission history of the Uniform School Law, the state supreme court noted its authority to "decide questions pertaining to preclearance under § 5 of the Voting Rights Act." App. 6a (citing *Hathorn v. Lovorn*, 457 U.S. 255 (1982)). More specifically, it could "review the circumstances under which the objection letter was issued in order to determine whether it was validly and timely issued." App. 6a-7a (citing *Garcia v. Uvalde County*, 455 F. Supp. 101, 102 (W.D. Tex. 1978) (three-judge court), *summarily aff'd*, 439 U.S. 1059 (1979)). Finally, the court referred to its responsibilities to address the important issues of state law raised by the parties. The court stated it had the power to declare "whether or not the acts of the Legislature of the State are in effect," and its failure to exercise this power "would do a disservice not only to the two districts involved in this case, but the entire state." App. 7a.

The state supreme court's decision rested on two grounds. First, the State properly submitted for preclearance in July 1986 the *entire* Uniform School Law, including the repealer of § 37-7-611. App. 15a. Second, the preclearance by the Attorney General of the amended version of § 37-7-103 impliedly resulted in the preclearance of the repealer of § 37-7-611 even if it had not been submitted because the two statutes are "clearly inconsistent." App. 14a.[17]

The thrust of the decision below was that the State properly submitted the Uniform School Law for three reasons. First, the entire Uniform School Law "was formally submitted to the U.S. Attorney General on July 22, 1986."

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[16] The state supreme court reversed the trial court's award of sanctions to Respondents under Miss. R. Civ. P. 11, finding "a very real dispute over the status of the school districts in this case." App. 20a.

[17] By reaching these issues, the court obviously concluded the repeal of § 37-7-611 was subject to § 5 preclearance.

App. 16a. Second, the looseleaf booklet accompanying the submission set "forth each section of the current law followed by each applicable section of [the Uniform School Law] for explanatory purposes." *Id.* The sections of the Uniform School Law, including § 47, dealing with the creation and operation of the several types of school districts were "immediately followed by Section 52 which establishes *one, and only one*, method by which school districts are abolished, altered or created." *Id.* Finally, § 52, which amended § 37-7-103, "was specifically *pointed out* in the July 22, 1986, letter of submission of the entire [Uniform School Law] by the Mississippi Attorney General." App. 16a.

The court also concluded the Attorney General's "reading of his own letter is contrary to any rational interpretation of that letter." App. 14a.[18] In addition, the deference ordinarily accorded the Attorney General's interpretation of the Voting Rights Act did not apply in this case because he had "obviously applied the wrong regulations." *Id.*[19]

The second ground on which the state court based its decision was "black letter principles of statutory construction." *Id.* The court reasoned that § 37-7-103, as amended by the Uniform School Law, addressed the circumstances under which the boundaries of municipal and other school districts could be altered. If not expressly repealed, § 37-7-611 was implicitly repealed by § 37-7-103. *Id.* "Assuming, for argument only, the repeal of § 37-7-611 was not sub-

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[18] The court apparently referred to the Attorney General's explanation in his May 25, 1990 objection letter of the August 29, 1986 letter in which he did not interpose an objection to the voting changes identified by the State in its July 22, 1986 submission.

[19] In his May 25, 1990 objection letter, the Attorney General cited two decisions of the Court and 28 C.F.R. §§ 51.26(d), 51.27 as support for the proposition that states must submit a voting change to the Attorney General in an "unambiguous and recordable manner." These two specific regulations were promulgated after the July 1986 submission by the State. The two decisions cited were *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969) and *McCain v. Lybrand*, 465 U.S. 236 (1984).

mitted for preclearance, the two statutes which were specifically precleared, §§ 37-7-103 and 113 are clearly inconsistent with § 37-7-611. A repeal may arise by necessary implication from the enactment of a subsequent act." *Id.* (quoting 1A N. Singer, *Statutes and Statutory Construction* § 23.09, at 332 (4th ed. 1985)).[20]

REASONS FOR GRANTING THE WRIT

I. The Mississippi Supreme Court's interpretation of the preclearance requirements of § 5 of the Voting Rights Act (a) conflicts with decisions of the Court and (b) the objectives of the Act itself.

In derogation of the clear aims of the Voting Rights Act, the Mississippi Supreme Court has permitted a potentially discriminatory voting change to be carried out despite an objection to the change by the Attorney General. The court's conclusion that the State's submission of the voting change was proper and that the Attorney General's objection was untimely is in direct conflict with the Court's decision in *McCain v. Lybrand*, 465 U.S. 236 (1984).

The decision below also significantly reduces the responsibility of jurisdictions covered by the Voting Rights Act to present clearly and to explain adequately voting changes submitted to the Attorney General for preclearance. The diminution of the burden on submitting jurisdictions will create administrative problems for the Attorney General. Ultimately, the purpose envisioned by

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[20] Prior to this case, the state supreme court had addressed the preclearance status of the repeal of § 37-7-611 but reached different conclusions. App. 19a-20a & n.5. *Compare Harrison County v. City of Gulfport*, 557 So. 2d 780, 788 (Miss. 1990) ("Thus, until preclearance is forthcoming, we must enforce the law as it existed before the objected-to change.") *with In re Enlargement of Corporate Boundaries of Booneville, Mississippi*, 551 So. 2d 890, 894-95 (Miss. 1989) ("The chancellor was correct in concluding that the annexation would not affect the status quo of the Prentiss County School System and in making his determination based on the repeal of § 37-7-611."). In those cases, however, the court did not have before it a complete record of the State's submissions. App. 7a n.5.

Congress for this alternative approach to preclearance—providing states with an expeditious method of having nondiscriminatory voting laws implemented without undue delay—will be disserved.

A. The decision below conflicts with the Court's decisions that require states to identify clearly the voting changes submitted for review.

The Court's initial statement regarding whether a state's § 5 submission complied with the Voting Rights Act appeared in *Allen v. State Board of Elections*, 393 U.S. 544 (1969).

> A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.

Id. at 571. In *United States v. Board of Commissioners*, 435 U.S. 110 (1978), the Court elaborated on the standard required of § 5 submissions by emphasizing "that the purpose of § 5 is to establish procedures in which voting changes can be scrutinized by a federal instrumentality before they become effective." *Id.* at 136. Although the Voting Rights Act provides that inaction by the Attorney General could constitute preclearance of a voting change, "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." *Id.*

The Court reaffirmed these obligations of a covered jurisdiction in *City of Rome v. United States*, 446 U.S. 156 (1980). Both the Department of Justice regulations and the Court's decisions require a jurisdiction to submit a voting change to the Attorney General in an "unambiguous and recordable manner." *Id.* at 169 n.6 (citing *Allen* and 28 C.F.R. § 51.10 (1979)). This requirement affords the Attorney General "an adequate opportunity to determine the purpose of the electoral changes and whether they will

adversely affect minority voting in that jurisdiction." 446 U.S. at 169 n.6.

In *McCain*, the Court provided its most extensive direction on this issue. After reviewing the history and purposes of the Voting Rights Act, and in particular the method of preclearance permitted by submitting a voting change to the Attorney General, the Court stated:

> [I]t is apparent that ambiguity concerning the scope of a preclearance is more likely if the State opts for the more expeditious method: silence constitutes consent under that method, and even when the Attorney General affirmatively states he has no objection, ambiguity may be present if the State's submission itself is ambiguous.

465 U.S. at 247. Furthermore, if there is "any ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such ambiguities in favor of the submitting jurisdiction . . . . " *Id.* at 257. Thus, submissions to the Attorney General must "be carefully construed to protect the remedial aims of the Act." *Id.*

The conflict between the decision below and *McCain* could hardly be more pronounced. Based on Mississippi's extensive experience with the preclearance procedures, the State was "on notice that a preclearance is limited to the changes which a covered jurisdiction has identified by its submission." *McCain*, 465 U.S. at 251 n.21. The State's submission of the Uniform School Law did not contain an explanation of the process by which municipal school district boundaries automatically extend to encompass territory in an adjacent school district after an annexation by its parent municipality. Nor did the submission indicate that this process was repealed by § 47 of the Uniform School Law. Moreover, the submission is utterly silent about the significant change in voting effected by the repeal of § 37-7-611: the residents of a city who are also residents of a suburban school district can, by virtue of their participation in city council elections, directly affect

the selection of the members of the city school board who are appointed by the city council. These residents will also retain the right to elect the board members of the suburban school district.

The discussion of the amendment to § 37-7-103 in § 52 in the submission simply reveals that any school district could voluntarily agree with any other school district to a revision of the boundaries of the districts. App. 37a. The submission of § 52 for preclearance cannot reasonably be read to have put the Attorney General on notice of the need to analyze whether and how the unexplained automatic extension policy of § 37-7-611 would be affected by § 52.[21]

Based on the rationale of the state court, the Attorney General should have gleaned this understanding from the bare citation of fifty-six statutes repealed by §§ 47-51 of the Uniform School Law and from § 52, which established the sole method of abolishing, altering or creating school districts. App. 16a. Significantly, the State in its submission did not explain the effect of § 52 on voting as it related to other sections of the Uniform School Law.

The court also failed to accord adequate weight to the correspondence concerning the July 1986 submission. The Attorney General plainly viewed the submission as being limited to those changes identified in the submission. *See McCain*, 465 U.S. 251 ("[T]he request for preclearance was viewed as limited to the change in election practices effected by [the act]."); *see also id.* at 251 n.20. The state court ignored the significance of "after-the-fact" statements of the Attorney General "in determining whether a particular change was actually precleared in analogous circumstances." *Id.* at 255-56 (citing *United States v. Georgia*, No. C76-1531A (N.D. Ga., Sept. 30, 1977), *summarily*

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[21] The State did not specifically identify and discuss the repeal of § 37-7-611 in its submission because it apparently concluded the repeal did not affect voting. App. 145a.

aff'd, 436 U.S. 941 (1978)).[22] Both the Attorney General and the State considered the 1986 submission to be limited to the thirteen voting changes specifically identified and explained in the submission.[23]

The court's holding that the preclearance of the voting changes identified by § 52 necessarily meant that other unidentified voting changes effected by § 47 were precleared is contrary to the holding in *McCain*: "A request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones thus cannot be considered an adequate submission of the latter practices." *Id.* at 256-57.[24] In sum, "[t]he broad scope given to the [1986 submission] by the [Mississippi Supreme Court] . . . [is] inconsistent with the foregoing governing principles." *Id.* at 257.[25]

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[22] "After-the-fact" statements of the Attorney General are a two-edged sword. In *United States v. Georgia*, the three-judge panel relied on a post-submission letter of the Attorney General to find that a particular voting change had been submitted and precleared.

[23] The title of an act submitted for review could be relevant by defining the scope of a preclearance request. *See McCain*, 465 U.S. at 251 ("[t]he title of the 1971 amendment unambiguously identified the changes in election practices which it effected . . . and served to define the scope of the preclearance request"). The title of the act submitted by Mississippi - the "Uniform School Law of 1986" - obviously conveyed no sense of the voting changes contained in the Law.

[24] *McCain* does state that "[w]hen a jurisdiction adopts legislation that makes clearly defined changes in its election practices, sending that legislation to the Attorney General merely with a general request for preclearance pursuant to § 5 constitutes a submission of the changes made by the enactment . . . . " 465 U.S. at 256. This language provides no support to the State because the changes effected by the repeal of § 37-7-611 were not "clearly defined" by the Uniform School Law.

[25] Since 1984, the Court has summarily affirmed decisions that found a state's submission incomplete or ambiguous in light of *McCain*. *See Brooks v. State Board of Elections*, No. CV288-146 (S.D. Ga. Dec. 14, 1989), *summarily aff'd*, ___ U.S. ___, 112 L.Ed.2d 243 (1990); *Haith v. Martin*, 618 F. Supp. 410, 413 (E.D.N.C. 1985), *summarily aff'd*, 477 U.S. 901 (1986).

In addition, the Mississippi Supreme Court's reasoning conflicts with

The Mississippi Supreme Court did not discuss *McCain*, but instead relied primarily on *Morris v. Gressette*, 432 U.S. 491 (1977). The decision in *Morris*, however, is premised on the Attorney General's failure to object to a "complete submission." 432 U.S. at 502, 504 & n.19; *see McCain*, 465 U.S. at 256 n.28. The adequacy of the submission in *Morris* was not questioned. The central issue in that case concerned the scope of judicial review of the Attorney General's failure to interpose a timely objection under the Voting Rights Act. 432 U.S. at 493.[26]

B. The failure to insist upon a clear statement of the changes submitted undermines the Voting Rights Act.

In addition to the conflicts described above, the Mississippi Supreme Court's decision raises important issues concerning the effective administration of § 5 of the Voting Rights Act. Significantly, the decision is contrary to the Attorney General's interpretation of the Act and the regulations promulgated by the Department of Justice.

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decisions of other courts. For example, in *East Flatbush Election Committee v. Cuomo*, 643 F. Supp. 260 (E.D.N.Y. 1986) (three-judge court), the city argued that certain voting changes had been submitted "with a package of other material and obtained the Attorney General's implicit approval in 1983." *Id.* at 265. The court disagreed, noting that although the Attorney General did not object to the changes submitted, he later took the position that the specific change at issue had not been specifically highlighted in the earlier submission and, therefore, had not been precleared. The city resubmitted the change to the Attorney General. *Id.*; *accord County Council of Sumter County v. United States*, 555 F. Supp. 694, 703 (D.D.C. 1983) (three-judge court) ("a political subdivision must state that it desires preclearance before it can claim preclearance by silence"); *United States v. Victoria Independent School Dist.*, No. V-86-17 (S.D. Tex., Nov. 14, 1986) (three-judge court) ("[T]he burden of proof is on political jurisdictions submitting a plan to persuade the Court that its method of election was clearly stated in its plan and has been approved. Ambiguities of a plan are to be resolved against the political jurisdiction.").

[26] The state court also relied on *Woods v. Hamilton*, 473 F. Supp. 641 (D.S.C. 1979) (three-judge court). The precedential force of *Woods* was significantly weakened by the later decision of the Court in *McCain*.

Today, virtually all voting changes are submitted by covered jurisdictions to the Attorney General for preclearance because of the cost and time constraints in litigating in the District of Columbia District Court.[27] By allowing for the administrative method of preclearance, however, "Congress in no way intended that the substantive protections of § 5 be sacrificed in the name of expediency." *McCain*, 465 U.S. at 246. Under either method, the covered jurisdiction bears the burden of proving that the change in voting does not have a discriminatory purpose or effect, and in both instances "federal officials are confronted with the same 'difficult substantive issue.' " *Id.* at 247 (quoting *Allen*, 393 U.S. at 558). With more emphasis on the administrative method of preclearance, the content and specificity of the submission by the covered jurisdiction becomes more critical. The increased likelihood of ambiguity in this method has already been discussed in the context of the conflict between the decision below and *McCain*.

Under the Mississippi Supreme Court's decision, a state could claim that the submission of an entire act was complete and unambiguous, even without specifically identifying every voting change, as long as the state includes the catch-all phrase "the entire act is submitted for review." In the face of this decision, the Attorney General's response in all but the clearest of submissions will be to interpose an objection or to request additional information rather than risk approving a voting change not identified in the submission but otherwise a part of the "entire act" submitted for review. This response, however, might well

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[27] The two alternative methods for preclearance set forth in § 5 are (1) by filing for a declaratory judgment in the District Court for the District of Columbia or (2) by submitting a voting change to the Attorney General. *See, e.g., Morris v. Gressette*, 432 U.S. 491, 502 (1977). The former method is the "basic mechanism" for preclearance. *McCain*, 465 U.S. at 247. In recognition of the potential delay in seeking preclearance by litigation, Congress provided states with a "speedy alternative method of compliance." *Morris*, 432 U.S. at 503; *see Allen*, 393 U.S. at 549 ("The provision for submission to the Attorney General merely gives the covered State a rapid method of rendering a new state election law enforceable.").

delay "the implementation of validly enacted, nondiscriminatory state legislation," a primary objective of the alternative preclearance method of the Voting Rights Act. *See Morris*, 432 U.S. at 503. Although this response by the Attorney General would be the most prudent exercise of his responsibilities, it "would only add acrimony to the administration of § 5." *Georgia v. United States*, 411 U.S. 526, 540-41 (1973).[28]

The state court also held, in effect, that a submission is complete and unambiguous, even though the voting change is not explained, if the code section effecting the change is identified. The Attorney General reviews more than state laws; he reviews voting changes brought about by state laws. *See McCain*, 465 U.S. at 251 ("As we previously observed, the preclearance procedures mandated by § 5 of the Voting Rights Act focus entirely on *changes* in election practices."). According to the state court, the Attorney General's May 25, 1990 letter characterized the submission of the Uniform School Law as incomplete because it "did not contain any reference whatsoever to the repeal of Miss. Code Ann. § 37-7-611." App. 8a. What the Attorney General actually stated was that the prior submission of the Uniform School Law "identified specific *voting changes*" but did not contain "any reference to the *voting changes* which the state now claims were precleared." App. 174a (emphasis added.) Contrary to the regulations in force in 1986, the state supreme court equates the mere notation of the repeal of a particular code section with the identification of the resultant voting

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[28] In the context of a declaratory judgment proceeding to obtain preclearance, a covered jurisdiction could hardly argue that the District of Columbia District Court precleared a voting change that was not identified in the complaint or litigated at trial. To hold a state to a less demanding standard in seeking preclearance from the Attorney General would render the declaratory judgment route superfluous. *Cf. Georgia v. United States*, 411 U.S. at 538 ("Any less stringent standard [for the burden of proof] might well have rendered the formal declaratory judgment procedure a dead letter by making available to covered States a far smoother path to clearance.").

change. *See McCain*, 465 U.S. at 255 ("The regulations indicate that the focus of the Attorney General's scrutiny of a statute was, understandably, limited to specific changes submitted for consideration."); *United States v. Bd. of Commissioners*, 435 U.S. at 136 n.26 ("[I]t bears noting that the Attorney General's regulations provide that such [submission] letters should clearly set forth the proposed change affecting voting for which clearance is being sought.").[29]

The state supreme court found fault with the Attorney General for not requesting additional information if he considered the State's July 1986 submission to be incomplete. In fact, the court emphasized the Attorney General's duty to do so under the regulations in effect in 1986. App. 13a (quoting 28 C.F.R. § 51.35 (1986)). This conclusion erroneously presumes the Attorney General viewed the State's submission as presenting the entire Uniform School Law for approval. Rather, the Attorney General considered only the thirteen specifically identified voting changes to be before him for review. The Attorney General's response on August 29, 1986 confirmed this view of the submission: "The Attorney General does not interpose any objection to the voting changes occasioned by [the Uniform School Law], as identified in your July 22, 1986, letter." App. 112a. As to the thirteen specifically identified voting changes, the State's submission was complete. Thus, there was no reason to request additional information regarding those changes.[30]

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[29] The regulatory requirement that covered jurisdictions clearly identify and explain the voting changes submitted for review has existed since the regulations were first promulgated. *See* 28 C.F.R. § 51.10 (1971). The requirement later appeared at *id.* § 51.25 (1981), and is currently codified at *id.* § 51.27 (1990).

[30] If anything, the lack of a request for additional information indicates the Attorney General was not aware of the voting change created by the repeal of § 37-7-611. *See McCain*, 465 U.S. at 254 n.24 ("If the Attorney General was aware that the Act required preclearance and had never been precleared, his failure to request either an explanation or at least some additional information would be difficult to comprehend.").

The state court also misperceived the purpose of the regulation allowing for a suspension of the 60-day period for action by a request for additional information. "The judgment that the Attorney General must make is a difficult and complex one, and no one would argue that it should be made without adequate information." *Georgia v. United States*, 411 U.S. at 540. The regulation enables the Attorney General to make an informed decision by requesting additional information relevant to the changes identified in the initial submission. The regulation is not a mechanism for the Attorney General to ferret out other potential voting changes not identified by the state.

This case presents the converse of *McCain* in which the Court held that the "significance the District Court attached to the Attorney General's request for additional information was wholly unwarranted." 465 U.S. at 252.[31] The State knows better than anyone what it wishes precleared, and the burden of uncovering voting changes in a submission should not be the responsibility of the Attorney General.

In any event, the court below did not indicate what additional information the Attorney General should have requested. Apparently, when faced with a submission of a voluminous act that may only identify a few voting changes, the Attorney General would be required to determine by his own review and research whether other voting changes exist or request additional information to have the state identify the voting changes not presented in the initial submission. If the state in response does not identify any additional voting changes, and the Attorney

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[31] The request for information by the Attorney General in *McCain* was "merely relevant to an identification of the changes which he had been requested to approve or to an evaluation of the purpose and effect of the changes made by the" submission. 465 U.S. at 252-53. Just as the Attorney General's request for and receipt of information "in no way suggest that he approved changes that he was not requested to approve," *id.* at 253, the Attorney General cannot logically be held to have approved unidentified or unexplained changes merely because he did not request information relevant to those changes.

General does not interpose an objection to the submission, the Attorney General will still be faced with the prospect of having precleared unidentified voting changes. The significance the state court attached to the Attorney General's lack of a request for additional information was "wholly unwarranted."[32]

The court's reliance on the absence in 1986 of any requirement that the submitting jurisdiction submit a copy of the law repealed or amended is similarly misplaced. Merely including a copy of the repealed statute does not transform an incomplete submission into a complete one. The regulations in 1986 required the State to provide "a clear statement of the change" and to explain "the difference between the submitted change and the prior law or practice . . . " 28 C.F.R. § 51.25(b) (1986).

The state court's decision should not be viewed as limited to an interpretation of regulations that are no longer in force or that have been revised to correct the problems illustrated by this case. Rather, the issue concerns the fundamental requirement that covered jurisdictions submit voting changes to the Attorney General in an unambiguous and recordable manner. This obligation arises from the Voting Rights Act itself, *see Allen*, 393 U.S. at 571, and has always been required by the Department of Justice regulations, *see City of Rome*, 446 U.S. at 169 n.6.

The conclusion by the state supreme court that the Attorney General exercised his important § 5 responsibilities and precleared the repeal of § 37-7-611 is as flawed as the district court's decision that was reversed in *McCain v. Lybrand*.

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[32] The Court need not speculate about the type of information the Attorney General would have needed to make his decision under § 5 regarding the repealer of § 37-7-611 had it been properly identified in the July 1986 submission. *Cf. McCain v. Lybrand*, 465 U.S. at 253. On February 28, 1988, in response to the specific submission of the repealer of § 37-7-611, the Attorney General requested detailed information to determine the practical effects of the repeal of § 37-7-611. App. 125a-129a.

> Just as "no one would argue" that the Attorney General's "difficult and complex" decision "should be made without adequate information," an argument that such a decision has been made when the record indicates adequate information was lacking carries little weight. And it would require a wild flight of imagination to suggest that the Attorney General recognized that the [repeal of § 37-7-611] effected [voting] changes . . . and then did not ask state officials to explain the failure to preclear those changes, but instead embarked on the task of gathering the information necessary to evaluate those alterations on his own rather than requesting state officials to provide the information to him . . . . It is even more unlikely that he would have kept his consideration and approval of the changes made by the [repeal of § 37-7-611] a secret from state officials in his letter preclearing the [other changes submitted in 1986].

McCain, 465 U.S. at 253-54 (citation and footnote omitted).

II. The doctrine of implied preclearance by operation of state law conflicts with decisions of the Court and the Voting Rights Act.

The state court held that, even if the repeal of § 37-7-611 had not been submitted for preclearance, that section was repealed by implication because §§ 37-7-103 and -113 were "specifically precleared" and are "clearly inconsistent" with § 37-7-611.[33] By enforcing the repeal of § 37-7-611 without the repealer being precleared effectively establishes a doctrine of implied preclearance based on the

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[33] The amended version of § 37-7-113, § 57 of Uniform School Law, was not specifically identified in the State's July 22, 1986 submission. *See supra* p. 9. The discussion regarding the failure to identify specifically § 47, which repealed § 37-7-611, is equally applicable to § 57. The Attorney General pointed out in February 1988 that the amended version of § 37-7-113 had never been submitted for preclearance. App. 128a.

operation of state law. This decision exceeds the authority granted state courts under the Voting Rights Act as established by *Hathorn v. Lovorn*, 457 U.S. 255 (1982). In that case, the Court held that when "a party to a state proceeding asserts that § 5 renders the contemplated relief unenforceable, . . . the state court must examine the claim and refrain from ordering relief that would violate federal law." *Id.* at 269-70.[34]

To the extent the state court held that the Attorney General precleared by implication the repeal of § 37-7-611 because of his preclearance of § 37-7-103, the decision conflicts with the Court's precedent that requires actual evaluation by the Attorney General of voting changes submitted for his review. *See McCain*, 465 U.S. at 254 ("[T]here is insufficient evidence for a finding that the Attorney General actually considered the changes made by the 1966 Act in preclearing the 1971 amendment . . . . "); *United States v. Bd. of Commissioners*, 435 U.S. at 136.

Moreover, the state court's decision imposes on the Attorney General a constructive knowledge of state law. The decision below suggests the Attorney General should have known that the amendment to § 37-7-103 effectively repealed § 37-7-611. App. 14a. This requirement is inconsistent with the Attorney General's obligations under § 5 and the Court's pronouncements regarding state law considerations in the context of the preclearance requirements of the Voting Rights Act.

The Court has held that "the Attorney General and the District Court for the District of Columbia should be free to decide preclearance questions on the essentially factual issues of discriminatory purpose and effect. We doubt that Congress intended to force either into speculation as to state law." *City of Lockhart v. United States*, 460 U.S.

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[34] The Mississippi Supreme Court had ordered an election for county school board members without requiring compliance with § 5 of the Voting Rights Act. The Court prohibited Mississippi courts from further implementation of the voting changes until the parties complied with § 5. 457 U.S. at 270.

125, 133 n.8 (1983). In *United States v. Board of Commissioners*, the Court rejected the notion that the application of state law can result in the preclearance of voting changes not actually evaluated by the Attorney General. There, the city sought and received preclearance of a referendum to change its form of government. Although the Attorney General indicated in his preclearance letter that the change to a new form of government was also subject to § 5, a three-judge district court concluded the Attorney General knew or should have known that, if the referendum passed, the city would be required to follow a state law that mandated a specific form of government for the city. 435 U.S. at 117. The Court dismissed as "irrelevant that the Attorney General might have been on notice" of this provision of state law and labelled as "extreme" the "position that the Attorney General should be charged with notice of all provisions of local law." *Id.* at 137 & n.28. Despite these pronouncements by the Court, the state supreme court held that the Attorney General approved a voting change—not because of the absence of a discriminatory purpose and effect—but because of the application of state law rules of statutory interpretation.

The doctrine of "implied preclearance" undermines Congress' intent for the Voting Rights Act "to reach 'the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race.' " *City of Pleasant Grove v. United States*, 479 U.S. 462, 468 (1987) (quoting *Allen*, 393 U.S. at 565). As the Court has frequently observed, the Voting Rights Act reflected "Congress' firm intention to rid the country of racial discrimination in voting," and, as a result, includes "unusual" and "severe" measures. *Allen*, 393 U.S.at 548, 556. The § 5 preclearance requirement "is perhaps the most stringent . . . and certainly the most extraordinary." *McCain*, 465 U.S. at 244. The presence of these requirements reflected Congress' concern "that covered jurisdictions would exercise their ingenuity to devise new and subtle forms of discrimination." *Hathorn v. Lovorn*, 457 U.S. 255, 268 (1982). In fact, § 5 establishes a pre-

sumption that covered jurisdictions, like Mississippi, would likely attempt to "evade the remedies for voting discrimination contained in the" Voting Rights Act. *See McCain*, 465 U.S. at 245 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 334-35 (1966)). Allowing a state to determine that its own voting changes can be enforced without complying with the Voting Rights Act turns the presumption on its head.

In sum, § 5 is concerned "with the reality of changed practices as they affect [minority] voters." *Georgia v. United States*, 411 U.S. at 531. The Attorney General determined the repeal of § 37-7-611 would adversely affect minority voters by freezing in place the boundaries of city school districts unless suburban school districts agreed to a revision of the districts' boundaries and by permitting residents of the suburban school district to participate in the selection of board members in both the suburban and city school districts. The potential for discrimination in this electoral scheme caused the Attorney General to interpose an objection when the repeal of § 37-7-611 was specifically submitted for review in December 1987. The Attorney General's objection, however, was found to be untimely because of his preclearance in August 1986 of other related voting changes, even though the State's submission contained no explanation of the change created by the repeal of § 37-7-611. Furthermore, it is clear the Attorney General did not consider or evaluate the voting change effected by the repeal of § 37-7-611 until it was expressly submitted for approval. The Mississippi Supreme Court's enforcement of the repeal of § 37-7-611 subverts the purposes of the Voting Rights Act by permitting a potentially discriminatory voting change to become effective without being properly submitted to federal officials for review.

The state court's adoption of the doctrine of implied preclearance infringes on the Attorney General's duty to subject voting changes to scrutiny and his ability to determine whether the changes will adversely affect minority voters. In the light of the structure, purpose and nature of § 5, the decision below cannot be allowed to stand.

CONCLUSION

For these reasons, this Petition for Certiorari should be granted.

Respectfully submitted,

HOLMES S. ADAMS
PERRY SANSING
(Counsel of Record)
BRUNINI, GRANTHAM, GROWER & HEWES
1400 Trustmark Building
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: (601)948-3101

CLELL G. WARD
MCLEMORE & WARD
525 North Broadway
Post Office Box 575
Greenville, Mississippi 38701
(601)332-4155

June 3, 1991

APPENDICES

APPENDIX A

Supreme Court of Mississippi

No. 07-CA-59534.

GREENVILLE PUBLIC SCHOOL DISTRICT; Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbill, III, and John Richards, in their official capacities as members of the Greenville Public School District Board of Trustees

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, in their official capacities as members of the District Board of Education.

Dec. 12, 1990.

As Corrected on Denial of Rehearing March 6, 1991.

Before ROY NOBLE LEE, C.J., and ROBERTSON and BLASS, JJ.

BLASS, Justice, for the Court:

Plaintiff, Greenville Public School District, sought a declaratory judgment that 14 square miles of territory lying in the Western Line Consolidated School District automatically became part of the Greenville District when that territory was annexed by the City of Greenville. This would have been true under Miss.Code Ann. § 37-7-611, prior to

the adoption of The Education Reform Act of 1986, ch. 492, Laws of Mississippi 1986, Section 47 of which purports to repeal that section. Plaintiff contends that the repealing section was not effective because, it argues, the section was not precleared under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

Greenville further alleged that although the Mississippi Attorney General submitted portions of the legislation, section 47 of Chapter 498 was neither submitted nor precleared. Defendant, Western Line, counterclaimed seeking costs and attorney fees under Rule 11(b) and praying that Greenville be enjoined from interfering with the collection of Western Line school taxes on property located within the proposed corporate limits of Greenville.

On Defendant's Motion for Summary Judgment, the circuit court ordered: (1) that funds collected and escrowed on behalf of Greenville Public School District be released and returned to those from whom collected and that the plaintiff pay the reasonable and necessary expenses incurred in making refunds to taxpayers; (2) that despite uncertainty of the repeal of § 37-7-611, the circuit court lacked jurisdiction to rule on the applicability of section 5 of the Voting Rights Act of 1965, until definitive rulings were made by the Supreme Court of Mississippi or the Attorney General of the United States; (3) that due to teacher employment contract requirements and the need to notify students of their status each school district was to retain its respective status quo; (4) that plaintiff pay defendant's expenses and attorney fees. Plaintiff has appealed.

For the reasons which follow, we find that Greenville was not entitled to the declaratory judgment, and was properly enjoined from disturbing the status quo of the respective school districts, but that the circuit court erred in ordering plaintiff to pay defendant's expenses and attorney fees.

I.

On July 22, 1986, The Education Reform Act of 1986, Senate Bill No. 2117, Chapter 492, Laws of Mississippi 1986, was submitted to the Attorney General of the United States for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. The submission included the act in its entirety; a copy of the roll call votes of both houses; and a looseleaf booklet entitled "Senate Bill No. 2117—Comparison of Current Law and New Law" which set forth each section of the then current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes. The submission states in part, "[f]or the sake of brevity, the submission will only set forth the particular sections which deal primarily with the voting rights even though *the complete act is submitted for review.*". (emphasis added). The submission then lists specific provisions of the Act among them Section 52, amending Miss.Code Ann. § 37-7-103.

The stated purpose of the legislation was to "provide that all public school districts in the state of Mississippi shall have a common system of administration." The legislation repealed, enacted and re-enacted numerous statutes as part of an statewide over-haul of the boards administering public education. Prior to the enactment, several articles controlled the boards of school districts, depending on the nature of the districts.[1] Miss.Code Ann. § 37-7-103 (1972) was enacted to control the abolition, alteration or creation of school districts after the reform. This statute gives the school board of any school district full jurisdiction, power and authority to alter the boundaries of any school district and requires the mutual consent of adjoining districts in the alteration of abutting bound-

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[1] Article 11 Municipal Separate School Districts, Miss.Code Ann. §§ 37-7-601 to 639 (1972). Article 13 Special Municipal Separate School Districts, §§ 37-7-701 to 745. Article 15 Line School Districts, §§ 37-7-801 to 811. Article 17 Isolated School Districts, §§ 37-7-901 to 911.

aries. All conflicting statutes concerning school boundaries were repealed, including § 37-7-611.

Section 47 of the Bill, not among the highlighted sections but part of the package, repeals those sections of Mississippi Code of 1972 which provide for the creation and operation of municipal separate school districts, including § 37-7-611.

By letter of August 29, 1986, Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, advised the Mississippi Attorney General that the Justice Department would interpose no objection to the voting changes occasioned by Chapter 492, S.B. No. 2117 (1986). The letter points out that the failure to object would not bar any subsequent judicial action to enjoin the enforcement of any change should additional information which would require objection materialize.

For reasons which do not appear in this record, on December 30, 1987, Mississippi Attorney General Pittman again submitted Chapter 492, Section 47 to the U.S. Attorney General for preclearance. By letter dated March 31, 1989, the Attorney General of the United States objected to the repeal of § 37-7-611. The Mississippi Attorney General's request for reconsideration of this objection was most recently denied by letter of May 25, 1990.

The annexation by the City of Greenville of the territory in question, the action which gave rise to the instant controversy, also required preclearance under the Voting Rights Act. Preclearance had not been obtained when this suit was commenced. The U.S. Attorney General interposed an objection to the annexation by the City of Greenville[2] of the territory at issue in this case, on February 10, 1989. This objection was withdrawn on February

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[2] The annexation was affirmed by this court in *Western Line Consol. v. City of Greenville*, 465 So.2d 1057 (Miss.1985) and *City of Greenville v. Farmers, Inc.*, 513 So.2d 932 (Miss.1987).

11, 1990, on Greenville's second request for reconsideration.

II.

We are called upon here to examine The Education Reform Act of 1986, in conjunction with Section 5 of the Voting Rights Act of 1965 and proceedings undertaken thereunder, to determine the effect on the school districts in question. This requires a determination of whether, and to what extent, the Education Reform Act of 1986 has been precleared, pursuant to section 5 of the Voting Rights Act of 1965.

State courts have inherent authority, and are presumptively competent, to adjudicate claims arising under the laws of the United States. *Yellow Freight Sys. v. Donnelly*, ___ U.S. ___, ___, 110 S.Ct. 1566, 1568, 108 L.Ed.2d 834, 839 (1990), quoting *Tafflin v. Levitt*, 493 U.S. ___, 110 S.Ct. 792, 107 L.Ed.2d 887 (1990); *see Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473, 477-78, 101 S.Ct. 2870, 2874-75, 69 L.Ed.2d 784 (1981); *Claflin v. Houseman*, 93 U.S. 130, 136-37, 23 L.Ed. 833 (1876). "[T]he presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore*, 453 U.S. at 478, 101 S.Ct. at 2875, 69 L.Ed.2d at 791. "[E]ven a finding of exclusive federal jurisdiction over claims arising under a federal statute usually 'will not prevent a state court from deciding a federal question collaterally.' " [citations omitted] *Hathorn v. Lovorn*, 457 U.S. 255, 266, 102 S.Ct. 2421, 2428, 72 L.Ed.2d 824, 835 (1982) (quoting *Gulf Offshore*, 453 U.S. at 483, n. 12, 101 S.Ct. at 2878, n. 12).

We recognize this concurrent jurisdiction, and its logical corollary, the duty and obligation of the courts of this state to enforce rights created under federal statutes. *Burrell*

v. Mississippi State Tax Comm'n, 536 So.2d 848, 863 (Miss.1988).

The courts of this state have no authority to *grant* preclearance which may be secured in only two ways: (a) administratively, via submission to the Attorney General of the United States, coupled with his failure to interpose timely objection (about which we say more below) or (2) judicially, via a declatory judgment action in the United States District Court for the District of Columbia. 42 U.S.C. § 1973c. There is nothing grudging in our acceptance of this view. *See Harrison County v. City of Gulfport*, 557 So.2d 780, 788 (Miss.1990) (and cases cited therein). However, "other courts may decide the distinct question of whether a proposed change is subject to the Act." *Hathorn*, 457 U.S. 255, 267, 102 S.Ct. 2421, 2429, 72 L.Ed.2d 824, 835 (citing *Allen v. State Bd. of Elections*, 393 U.S. 544, 557-60, 89 S.Ct. 817, 827-29, 22 L.Ed.2d 1 (1969)); *McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224, 68 L.Ed.2d 724 (1981). A necessary part of the authority to decide matters pertaining to preclearance is the determination, commonly exercised by United States District Courts, of whether the United States Attorney General has interposed a valid objection within the statutory 60-day period and the related question of whether a covered jurisdiction has submitted a proposed change for preclearance. *See, e.g., Lucas v. Bolivar County, Mississippi*, 567 F.Supp. 433, 435 (N.D. Miss.1983); *Blanding v. Dubose*, 509 F.Supp. 1334, 1335 (D.S.C.1981); rev'd on other grounds, 454 U.S. 393, 102 S.Ct. 715, 70 L.Ed.2d 576 (1982); *McRae v. Board of Education*, 491 F.Supp. 30, 32 (N.D.Ga.1980); *Garza v. Gates*, 482 F.Supp. 1211 (W.D.Tex.1980); *Woods v. Hamilton*, 473 F.Supp. 641, 644-48 (D.S.C.1979). Under the authority of *Hathorn v. Lovorn*, 457 U.S. 255, 102 S.Ct. 2421, 72 L.Ed.2d 824 (1982), this Court has the power to decide questions pertaining to preclearance under § 5 of the Voting Rights Act. Under in *Garcia v. Uvalde County*, 455 F.Supp. 101, 102

(W.D.Tex.1978), this Court can review the circumstances under which the objection letter was issued in order to determine whether it was validly and timely issued. The courts of the State of Mississippi clearly must, and do, have the power to declare whether or not the acts of the Legislature of the State are in effect. This Court has that power.[3] Failure to exercise this power would do a disservice not only to the two districts involved in this case, but the entire state.

III.

HAS FEDERAL PRECLEARANCE BEEN OBTAINED FOR THE REPEAL OF MISS.CODE ANN. § 37-7-611?

Senate Bill No. 2117, entitled "The Uniform School Law of 1986", was signed by the Governor of Mississippi, on April 15, 1986. The Act was submitted to the United States Attorney General for preclearance[4] on July 22, 1986 and was received by the Department of Justice on July 23, 1986.[5] The U.S. Attorney General has sixty days from the

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[3] The language in *Bassett v. Town of Taylorsville*, 542 So.2d 918, 920 n. 3 (Miss.1989), may be a bit loose, and, to the extent it is inconsistent with what we say here, that language should be deemed modified.

[4] Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c provides two methods by which a covered jurisdiction may preclear an enactment affecting voting. One is to obtain a declaratory judgment in the U.S. District Court for the District of Columbia, that the enactment does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. The alternative is to submit the enactment or procedure to the Attorney General of the United States, who then has sixty (60) days in which to interpose an objection. Should the U.S. Attorney General fail to object, the jurisdiction is free to implement the enactment.

[5] The matter of preclearance of the "repeal" of Section 37-7-611 has been noted in *Harrison County v. City of Gulfport*, 557 So.2d 780, 788 (Miss.1990) and *In Re Enlargement of Corporate Boundaries of Booneville, Mississippi*, 551 So.2d 890, 894-95 (Miss.1989). Neither the July 22, 1986 submission, nor many other facts set forth above, were a part

receipt of the submission by the Department of Justice in which to interpose an objection. 28 C.F.R. § 51.8 (1986). During this 60-day period, the U.S. Attorney General did not request additional information. By letter of August 29, 1986, Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, advised Mississippi Attorney General Edwin Lloyd Pittman that the Justice Department would interpose no objection to the voting changes occasioned by Chapter 492, S.B. No. 2117 (1986).[6]

In his letter of May 25, 1990, the U.S. Attorney General declared that the State of Mississippi had not submitted the voting change in an "unambiguous and recordable manner," citing *Allen v. State Board of Elections*, 393 U.S. 544, 571, 89 S.Ct. 817, 834, 22 L.Ed.2d 1 (1969). *Accord, McCain v. Lybrand*, 465 U.S. 236, 104 S.Ct. 1037, 79 L.Ed.2d 271 (1984); and Procedures for the Administration of Section 5 (28 C.F.R. §§ 51.26(d), 51.27). The U.S. Attorney General took the position that the prior submission of the Uniform School Law did not contain any reference whatsoever to the repeal of Miss.Code Ann. § 37-7-611, as illustrated in the following statement:

> Both the prior submission of the Uniform School Law and the prior submission of the 1978 act identified specific voting changes adopted by those statutes, but neither submission contained *any reference* to the voting changes which the state now claims were precleared.
> (emphasis added)

The letter refers to case law interpreting Section 5 which charges the submitting jurisdiction with responsibility for identifying voting changes, not the United States Attorney

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of the record before this Court in *Harrison County* or *City of Booneville*, nor were these matters otherwise brought to the attention of this Court until this case.

[6] [See Appendix H, pp. 112a-113a.]

General, and concludes that the State of Mississippi, should have uncovered voting changes "of which the state itself seemingly was unaware at the time prior submissions were made." The U.S. Attorney General then negates any claim made by the State of Mississippi that the repeal of section 37-7-611 has been previously submitted and precleared.

A.

To ascertain the status of Mississippi Law, we are called upon to determine whether or not the submission in 1986 of the Education Reform Act included a submission of the repealer of § 37-7-611.

On July 22, 1986, The Education Reform Act of 1986, Senate Bill No. 2117, Chapter 492, Laws of Mississippi 1986 was submitted to the Attorney General of the United States for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *The submission included the act in its entirety; a copy of the roll call votes of both houses; and a looseleaf booklet entitled "Senate Bill No. 2117—Comparison of Current Law and New Law" which set forth each section of the then current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes.* The submission states in part, "[f]or the sake of brevity, the submission will only set forth the particular sections which deal primarily with the voting rights even though *the complete act is submitted for review.*" The submission then lists specific provision of the Act among which is Section 52 amending § 37-7-103, and Section 57 amending § 37-7-113. The amended §§ 37-7-103 and -113 were quoted with emphasis on the language deleted in the re-enacted section. Prior to 1986 § 37-7-103 stated:

> § 37-7-103. **Abolition, alteration or creation of districts by county board of education.**
>
> After school districts have been reconstituted and created in the manner prescribed by Article 1 of this

> chapter, the county board of education shall have full jurisdiction, power, and authority at any regular meeting thereof or at any special meeting called for that purpose, to abolish any existing district other than a municipal separate school district, to change or alter the boundaries of any such district, to create any new districts, and to otherwise create, alter, or abolish any of the school districts of such county, other than the municipal separate school districts. In addition thereto, with the consent of the board of trustees of the municipal separate school district involved, the county board of education may add to such municipal separate school districts any part of the county adjoining same, and with the consent of the board of trustees of the municipal separate school district involved, the county board may detach territory from such municipal separate school district and annex same to an adjoining district in the county school system.

The amended § 37-7-103 reads:

> *From and after July 1, 1987, the school board of any school district* shall have full jurisdiction, power, and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish *such* existing district, *or* to *reorganize*, change or alter the boundaries of any such district.[ ] In addition thereto, with the consent of the *school* board [ ] of the [ ] school district involved, the *school* board [ ] may add to such [ ] school district [ ] any part of the *school district* adjoining same, and with the consent of the *school* board [ ] of the school district involved, [ ] may detach territory from such school district and annex same to an adjoining district.[ ]

Changes in the statute were highlighted as above in the original submission. The brackets indicate language deleted, emphasis indicates language changed.

Before 1986, § 37-7-113 required only county boards to submit proposed changes to the state educational finance commission for approval prior to creating, abolishing, or altering any school district. The amended section required all school boards to submit reorganization plans to this agency, and states:

> **37-7-113. Necessity of approval by state educational finance commission.**
>
> Notwithstanding any of the foregoing provisions, it is hereby expressly provided that no order of the school board reorganizing, abolishing or altering any school district, whether same be taken with or without a petition therefor, shall be final unless and until said proposed reorganization, alteration or abolition shall be submitted to and approved by the State Board of Education. In the event the proposed action shall be disapproved by the State Board of Education, the same shall be void and of no effect. In the event of the filing of any petitions with the school board under the provisions of said sections, the school board shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the school board upon such question shall be final and conclusive for the purpose of the submission of said matter to the State Board of Education and the approval or disapproval of the action by said board.

Section 47 of the Bill[7] repeals those sections of Mississippi Code of 1972 which provide for the creation and operation of municipal separate school districts, among which is § 37-7-611, which states, in pertinent part:

> Where the corporate limits of any municipality which constitutes a municipal separate school district, either

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[7] Section 47 states: [See Appendix F, p. 75a.]

> with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district.
>
> * * * * * *

By this same act, those sections of Mississippi Code of 1972 providing for the creation and operation of line consolidated, isolated, special municipal separate and county school districts were also repealed.

The act was designed to create one, and only one, method by which school districts throughout the State of Mississippi were created, reorganized, abolished or altered. It was also crafted to provided that *any* change in *any* district was subject to prior approval by the state educational finance commission, to insure fiscal viability.

The U.S. Attorney General, in his letter of May 1990, cites 28 C.F.R. § 51.27 (1989), which currently governs the required contents of submission. This regulation provides that a copy of the repealed statute be included in the submission. The regulations controlling submissions in effect in 1986, when the State of Mississippi submitted Senate Bill 2117, 28 C.F.R. §§ 51.1 through 51.54, did not require the inclusion, by the covered jurisdiction, of a copy of the prior law being amended or repealed.

The required contents of a submission were set out in 28 C.F.R. § 51.25 (7-1-86 Edition). This regulation stated in pertinent part:

> § 51.25 Required contents
>
> Each submission should contain the following information or documents to enable the Attorney Gen-

> eral to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:
>
> (a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.
>
> (b) If the change affecting voting is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

In addition, in 1986, 28 C.F.R. § 51.35 (7-1-86 Edition) governed the Attorney General's authority to request additional information from submitting jurisdictions. At that time, this regulation imposed a duty on the U.S. Attorney General to request additional information if the submission was incomplete, providing as follows:

> § 51.35. Obtaining information from the submitting authority.
>
> (a) If a submission does not satisfy the requirements of § 51.25, the attorney general *shall* request further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after the receipt of the original inadequate submission and no later than the 60th day following its receipt.

(emphasis added)

Although we recognize that federal courts defer to the interpretations of the Voting Rights Act made by the U.S. Attorney General, we cannot ignore the fact that the

Attorney General's reading of his own letter is contrary to any rational interpretation of that letter. Additionally, while recognizing that the opinion of the U.S. Attorney General is given great weight, *Blanding v. DuBose*, 454 U.S. 393, 401, 102 S.Ct. 715, 719, 70 L.Ed.2d 576, 583 (1982), we are not obliged to defer to his interpretation of the Voting Rights Act when he has obviously applied the wrong regulations. Nor are we obliged to ignore black letter principles of statutory construction.

It is clear, reading the repealed § 37-7-103 and the reenacted § 37-7-103 that the only circumstance which is addressed is that in which a municipal and county school district is altered. Even assuming § 37-7-611 was not specifically repealed, it was implicitly repealed by § 37-7-103. Assuming, for argument only, the repeal of § 37-7-611 was not submitted for preclearance, the two statutes which were specifically precleared, §§ 37-7-103 and 113 are clearly inconsistent with § 37-7-611. A repeal may arise by necessary implication from the enactment of a subsequent act. 1A N. Singer, Statutes and Statutory Construction § 23.09, at 332 (4th ed. 1985). When a subsequent enactment covering a field of operation co-existent with a prior statute cannot by any reasonable construction be given effect while the prior law remains in existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict. *Cooper v. General Dynamics, Corvair Aerospace Div.*, 533 F.2d 163 (5th Cir.1976). The intent to repeal all former laws upon a subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with that subject. Singer § 23.13, at 358.

B.

The case here is unlike that in *U.S. v. Sheffield Bd. of Comm'rs.*, 435 U.S. 110, 98 S.Ct. 965, 55 L.Ed.2d 148

(1978) in which the Board of Sheffield, Alabama wished to hold a referendum to determine voter preference for a commission or mayor-council form of government. Following the approval of a change to a mayor-council government, the U.S. Attorney General notified the city that, although there was no objection to the referendum itself, any change in the government would require a preclearance under § 5 of the Voting Rights Act. Thereafter, the U.S. Attorney General objected to the proposed method of selecting councilmen. The *Sheffield* Court held that approval of the referendum did not constitute an approval of the change in form of government under the preclearance procedures and the city had not complied with § 5 of the Voting Rights Act, and could not implement the mayor council government.

In *Sheffield*, the U.S. Attorney General specifically withheld preclearance of the change in government. In the case before this court, the U.S. Attorney General's letter specifically precleared the entire Education Reform Act, after which the U.S. Attorney General has denied that one section of that act was submitted.

Allen v. State Bd. of Elections, 393 U.S. 544, 89 S.Ct. 817, cited by the U.S. Attorney General in the letters denying preclearance of the repeal of § 37-7-611 is also distinguishable. This was a consolidation of four cases. Although none of the voting changes were "formally" submitted to the U.S. Attorney General, appellees argued that the Attorney General was aware of the changes. In rejecting this argument, the court stated that, although no formal procedure was required, the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act. 393 U.S. at 571, 89 S.Ct. at 834, 22 L.Ed.2d at 20.

It should be clear that the facts here are significantly different from those in *Allen*. First, the entire Uniform School Law of 1986, Senate Bill No. 2117, Chapter 492, Laws of Mississippi, 1986 was formally submitted to the U.S. Attorney General on July 22, 1986. Second, included in the submission was "Exhibit 'C' . . . a looseleaf booklet entitled 'Senate Bill Number 2117—Comparison of Current Law and New Law' which merely sets forth each section of the current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes." In this booklet, and in the bill, Sections 47-51, repealing the laws which provided for the creation and operation of municipal separate school districts, special municipal separate school districts, line consolidated school districts and isolated school districts, and for the reorganization of school districts in 1957, are immediately followed by Section 52 which establishes *one, and only one*, method by which school districts are abolished, altered or created. The section clearly highlights changes in the old § 37-7-103 in which the boundaries of *any* school board in the state is to be altered, only with the consent of the adjoining school board. Third, section 52 was specifically *pointed out* in the July 22, 1986, letter of submission of the entire act by the Mississippi Attorney General. The U.S. Attorney General replied, "The Attorney General does not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986) as identified in your July 22, 1986 letter."

Morris v. Gressette, 432 U.S. 491, 97 S.Ct. 2411, 53 L.Ed.2d 506 (1977) presented the question of whether the U.S. Attorney General's decision not to object to a covered state's proposed change in its laws, submitted for his consideration under § 5, was subject to judicial review. In 1971 South Carolina enacted Act 932 reapportioning the State Senate. This Act was submitted to the U.S. Attorney General for *preclearance*. Prior to the objection of the U.S. Attorney General, several suits were filed in the U.S. District Court of South Carolina challenging the Act as vio-

lative of the fourteenth and fifteenth amendments. Notwithstanding the involvement of the U.S. Attorney General, the South Carolina District Court retained jurisdiction of the case and a new reapportionment plan was filed which that court found constitutional. The U.S. Attorney General did not interpose an objection to the new plan, in deference to the District Court's decision. This failure to object to the new plan was challenged in the U.S. District Court for the District of Columbia, which directed the Attorney General to consider the plan without deference to the South Carolina court's decision, after an objection was interposed. On appeal the D.C. court affirmed. The District Court of South Carolina refused to enjoin the implementation of the new plan, holding that the requirements of § 5 were satisfied when the Attorney General failed to object within 60 days after submission, and the Administrative Procedure Act did not authorize judicial review of the Attorney General's determination not to interpose an objection in deference to the District Court's ruling. The Supreme Court affirmed.

In reaching this decision, the Supreme Court noted:

> The nature of the § 5 remedy which this Court has characterized as an "unusual" and "severe" procedure, (citation omitted), strongly suggests that Congress did not intend the Attorney General actions under that provision to be subject to judicial review. Section 5 requires covered jurisdictions to delay implementation of validly enacted state legislation until federal authorities have had an opportunity to determine whether that legislation conforms to the Constitution and to the provisions of the Voting Rights Act.

432 U.S. at 501-02, 97 S.Ct. at 2419, 53 L.Ed.2d at 517.

The court examined and noted the intent of Congress to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions, "[t]he congressional

intent is plain: The extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission." 432 U.S. at 504, 97 S.Ct. at 2420, 53 L.Ed.2d at 518. The court concluded, "[W]e hold that the objection interposed by the Attorney General to § 2 of Act 1205 on July 20, 1973, *nunc pro tunc*, is invalid. South Carolina is therefore free to implement its reapportionment plan for the State Senate." 432 U.S. at 507, 97 S.Ct. at 2422, 53 L.Ed.2d at 520.

Consistent with *Morris v. Gressette*, we find that the U.S. Attorney General *precleared* the entire 1986 act when he failed to interpose any objection to the July 22, 1986, submission; therefore, any subsequent objection to a portion of that act is invalid and the 1986 act was effective from the date of preclearance.

Woods v. Hamilton, 473 F.Supp. 641 (D.C.S.1979) was an action to enjoin the enforcement of ordinances implementing home rule in Charleston County, South Carolina. The South Carolina 1975 Home Rule Act had been *precleared* by the U.S. Attorney General. By letter to the Attorney General of South Carolina, the U.S. Attorney did not object to the holding of a referendum on the question of the form of government of each county and city in the state, while attempting to reserve the right to object to the implementation in individual counties of the several forms of government. Finding the decision in *Morris v. Gressette* controlling, the district court characterized the U.S. Attorney's tardy decision to interpose an objection as a belated attempt to label the implementation of the changes as an "uncleared change."

We find here, as the South Carolina court did in *Woods v. Hamilton*, that the U.S. Attorney General is belatedly attempting to reconsider his earlier *preclearance* by labeling that which he wishes to reconsider as "uncleared".

Here, as in South Carolina, the state Attorney General submitted the entire act for consideration. Here, as in *Woods v. Hamilton*, the U.S. Attorney is not entitled to a "second bite" at the Mississippi Education Reform Act of 1986.

C.

Recent Mississippi cases have dealt with the impact of municipal annexations on adjacent county school districts. *In Re City of Booneville, Prentiss Cty.*, 551 So.2d 890 (Miss.1989); *Harrison County v. City of Gulfport*, 557 So.2d 780 (Miss.1990); *Matter of Boundaries of Jackson*, 551 So.2d 861 (Miss.1989).

In *Harrison County* the primary issue was the standing of the Harrison County Board of Supervisors and the County Board of Education to contest the annexation of county territory by the City of Gulfport and the City of Biloxi, respectively. Nothing in this opinion should be interpreted to deny the standing of the Harrison County officials.

Booneville more directly addressed the status of the repeal of § 37-7-611. Assuming the statute had not been repealed, the loss of the territory annexed by the City of Booneville would devastate the Prentiss County School District. Objectors argued that the chancellor was obliged to and erred in not considering the impact of the annexation on the school districts due to the fact that § 37-7-611 had not been repealed. The court recognized that the issue of preclearance is a federal question, but noted the inconsistency in Mississippi law occasioned by the dispute over the presumably incomplete preclearance of the Education Reform Act, stating that the Prentiss County School District would not automatically lose the children in the annexation area due to the procedures established by Miss.Code Ann. § 37-7-103, *et seq.* The court concluded that these procedures, separate and apart from the stat-

utes governing annexation of territory by a municipality, precluded the alteration of the status quo of the Prentiss County School System.

Matter of Boundaries of Jackson, 551 So.2d 861 (Miss.1989) recognizes the limited authority of this court. Although we cannot grant *preclearance*, we can clearly recognize that it has been accomplished.

IV.

WAS THE AWARD OF EXPENSES AND ATTORNEY'S FEES TO WESTERN LINE PROPER?

Western Line prayed for attorney fees under Miss.R.Civ.P. 11. In defendant's "Memorandum Supporting Motion for Summary Judgment" the court is asked to impose sanctions under this rule, which provides for the imposition of expenses and attorneys' fees only if a party "files a motion or pleading which, in the opinion of the Court, is frivolous or is filed for the purpose of harassment or delay." Miss.R.Civ.P. 57 allows for declaratory relief in any "actual controversy that has not reached the stage at which either party may seek a coercive remedy."

A pleading is frivolous only when the pleader has no hope of success. *Tricon Metals & Servs., Inc. v. Topp*, 537 So.2d 1331, 1335 (Miss.1989). There was and is a very real dispute over the status of the school districts in this case. In light of the circuit court's own order which states that Mississippi law is unclear as a result of the dispute over *preclearance*, we cannot say that the pleading filed by Greenville is frivolous.[8] Finding the circuit court abused its discretion in imposing sanctions, we reverse on that

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[8] Although the action of Greenville School District in seeking declaratory relief was arguably premature due to the fact that preclearance of the annexation was not obtained until February 1990, the school district prudently sought this determination.

issue. *Nationwide Mut. Ins.Co. v. Evans*, 553 So.2d 1117, 1119 (Miss.1989).

Accordingly, we affirm as to the release and return of the escrowed funds and payment by the plaintiff of the costs of such refund, and reverse as to the payment of attorneys' fees and expenses of the defendant. We affirm as to maintaining the status quo of the two school districts, finding that they remained unchanged by the annexation.

AFFIRMED IN PART AND REVERSED IN PART.

ROY NOBLE LEE, C.J., HAWKINS and DAN M. LEE, P.JJ., PRATHER, ROBERTSON, SULLIVAN and ANDERSON JJ., concur.

PITTMAN, J., not participating.

APPENDIX B

Supreme Court of Mississippi
Linda Stone, Clerk
Third Floor Gartin Building
450 High Street
P.O. Box 249
Jackson, Mississippi 39205-0249

DEPUTY CLERKS
YVONNE BURNHAM
KATHY GILLIS

TELEPHONE:
601/359-3694
FAX:
601/359-2407

March 6, 1991

Clell G. Ward
Attorney at Law
Box 575
Greenville MS 38701

John Perry Sansing
BRUNINI GRANTHAN
GROWER FIRM
P O Drawer 119
Jackson MS 39205

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 6th Day of March, 1991.

Supreme Court Case #07-CA-59534

Trial Court Case #11091

Greenville Public School District; Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbell, III, and John Richards, in their official capacities as members of the Greenville Public School District Board of Trustees

vs.

Western Line Consolidated School District; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr., and Martha Carroll, in their official capacities as members of the District Board of Education

Petition for Rehearing Denied. Pittman, Banks, and McRae, JJ., Not Participating

Motion of Western Line to Retax Costs Sustained and Greenville Public School District, et al. are taxed with all costs

Supreme Court Clerk

lwp

ccs: James Robertshaw
Giles W. Bryant

APPENDIX C

**IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, MISSISSIPPI**

No. 11,091

GREENVILLE PUBLIC SCHOOL DISTRICT, et al.,
PLAINTIFFS,

VS.

WESTERN LINE CONSOLIDATED SCHOIOL DISTRICT, et al.,
DEFENDANTS.

FILED

88 MAY 5 AM 9 09

**NANCY WHITE REED
CIRCUIT CLERK**

BY /s/ S. Ross D.C.

ORDER GRANTING RELIEF

This cause coming on to be heard on defendants' Motion for Summary Judgment on facts admitted or otherwise stated in the pleadings, stipulated to be correct, and on additional documentary evidence adduced on said hearing, and the Court, being fully advised as to the law and the facts, doth ORDER AND ADJUDGE:

1. As a result of letters on behalf of plaintiffs, the Tax Collector of Washington County, has been forced to escrow current tax collections on motor vehicles and mobile homes to avoid exposure to liability for failure to collect school

taxes at the higher rate levied by plaintiffs or for wrongfully disbursing funds to defendants. As a result these funds, which have been budgeted by defendants for current school expenses, have been wrongfully and unlawfully withheld from defendants. Plaintiffs are ordered and directed to take such action as may be necessary for immediate release of these funds, and are further ordered and directed to reimburse the Tax Collector for reasonable and necessary expenses incurred in making refunds to taxpayers who have paid at the higher rate, as subsequently directed.

2. Failure of the Attorney General of the United States to object or not object to repeal of §37-7-611, Mississippi Code of 1972, by §47, Chapter 492, Laws of 1986, has left Mississippi statutes applicable to the issues presented in this litigation unclear. Exclusive jurisdiction of matters within the ambit of the Voting Rights of 1965 is vested in the United States District Court for the District of Columbia and/or the Attorney General of the United States, and this Court has no jurisdiction to rule in these areas. Accordingly, an ultimate decision is withheld pending definitive rulings by the Supreme Court of Mississippi or the Attorney General of the United States.

3. In the interim, defendants need relief. Under §37-9-105, Mississippi Code of 1972, defendants are required to notify any teachers not to be tendered contracts for the 1988-89 school year no later than April 8, 1988. Under the uncertainty created by this action, defendants cannot do this and will be irreparably harmed by loss of good teachers who may accept other employment. In addition, parents and pupils should at the very least know which schools will be attended during the coming school year. Accordingly, it is further ordered that:

a. All pupils residing in areas of Western Line Consolidated School District included within the December 9, 1987, annexation by the City of Greenville, will attend

Western Line Schools to which they are presently assigned for the school year 1988-89; and,

b. Western Line will continue to levy and collect school taxes on property within such areas for the current fiscal year and for the fiscal year ending June 30, 1989.

4. It is further ordered that plaintiffs pay defendants the reasonable and necessary expenses, including reasonable attorney fees, incurred in defense of this action.

5. Either party may have an appeal without supersedeas from this order under §11-5-7, Mississippi Code of 1972, to settle the principles of this case, application therefor to be made within thirty (30) days of the date of this Order. In the event of any appeal, the parties are directed to prepare a Stipulation of Facts from the record in this case, which shall include materials presented to the Court during argument, it having been represented to this Court there is no disagreement as to material facts.

ORDERED AND ADJUDGED this 22nd day of March, 1988.

/s/ Arthur B. Clark
Circuit Judge

APPROVED AS TO FORM:

McLEMORE & WARD
BRUNINI, GRANTHAM, GROWER & HEWES

By _____
Attorneys for Plaintiffs

ROBERTSHAW, TERNEY, NOBLE & SMITH

By /s/ J. Robertshaw
Attorneys for Defendants

APPENDIX D

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

CAUSE NO. 11,091

GREENVILLE PUBLIC SCHOOL DISTRICT; Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbell, III, and John Richards, in their official capacities as members of the Greenville Public School District Board of Trustees

PLAINTIFFS

VS.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT OF WASHINGTON AND ISSAQUENA COUNTIES, MISSISSIPPI; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, in their official capacities as members of the District's Board of Trustees

DEFENDANTS

FILED

16 Day of Feb 19 88

Nancy White Reed
Circuit Clerk

By /s/ P. Sherman D.C.

AMENDED COMPLAINT

Greenville Public School District, Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbell, III, and John Richards file this Amended Complaint pursuant to Rule 57 of the Mississippi Rules of Civil Procedure against Western Line

Consolidated School District of Washington and Issaquena Counties, Mississippi, and the Board of Trustees of Western Line, Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, in their official capacity, requesting the declaratory relief described herein and, in support thereof, would show the following:

PARTIES

1. Greenville Public School District is a political subdivision of the State of Mississippi and is located in Greenville, Mississippi.

2. Mary Haynes is a resident citizen of Greenville, Mississippi. Ms. Haynes is a member of the Board of Trustees of the Greenville School District.

3. Carolyn Morris is a resident citizen of Greenville, Mississippi. Ms. Morris is a member of the Board of Trustees of the Greenville School District.

4. Roy Campbell, III is a resident citizen of Greenville, Mississippi. Mr. Campbell is a member of the Board of Trustees of the Greenville School District.

5. John Richards is a resident citizen of Greenville, Mississippi. Mr. Richards is a member of the Board of Trustees of the Greenville School District.

6. Defendant Western Line is a political subdivision of the State of Mississippi; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, are elected members of the Board of Trustees of the Western Line Consolidated School District of Washington and Issaquena Counties, Mississippi.

FACTS

7. On August 3, 1982, the City of Greenville, Mississippi petitioned the Chancery Court of Washington County, Mississippi seeking to annex approximately 19 square miles

of territory to the then existing corporate limits of the municipality. Several individual businesses and a portion of the Western Line Consolidated School District were located in the area the City was seeking to annex. Those businessmen objected to and opposed the proposed annexation in the Chancery Court of Washington County and before the Mississippi Supreme Court on appeal. The Supreme Court allowed the city to annex a portion of the desired territory on September 30, 1987. A final decree, annexing approximately 14 miles, was signed by Chancellor Nat Bullard on December 9, 1987. A copy of the decree is attached hereto as Exhibit A.

8. During the 1986 session of the Mississippi Legislature, the Legislature enacted the Uniform School Law, Chapter 492, Laws of Mississippi, 1986 Regular Session. Section 47 of the Uniform School Law repealed Section 37-7-611 of the Mississippi Code of 1972, which provided that any territory annexed to a municipality would automatically become a part of the municipal school district. However, Section 47 of the Uniform School Law was not designated in the original submission for preclearance by the Attorney General of the United States. The Attorney General of Mississippi submitted Section 47 to the Attorney General of the United States on December 29, 1987.

9. Plaintiff contends the repeal of Section 37-7-611 is void and of no effect until it has been precleared by the Attorney General of the United States. Accordingly, Section 37-7-611 is the law in Mississippi and, until Section 47 is precleared, controls the effect of a municipal annexation on county school district boundaries in the State of Mississippi. Attached hereto as Exhibit B is a copy of the submission of Section 47 of the Uniform School Law by the Attorney General of Mississippi. The 60-day period for review by the Attorney General of the United States will expire on February 29, 1988.

EXISTING CONTROVERSY

10. The Defendant contends Section 37-7-611 is inapplicable to this controversy, notwithstanding the failure of the State of Mississippi to preclear the repealer. The Defendant further contends that Section 37-7-103 of the Mississippi Code of 1972, as amended, provides the exclusive method by which school districts can alter district boundaries. Section 37-7-103 is inapplicable to this controversy. That Section was amended by Section 52 of the Uniform School Law, effective July 1, 1987. In keeping with the overall objective of the Uniform School Law, Section 52 contains conforming language that is generic in its application to school districts in the State. The amending language in Section 52 does not create a conflict with Section 37-7-611. To the contrary, Section 37-7-103 simply provides a means of reorganizing, altering or otherwise changing the boundaries of a school district by consent. Section 37-7-103 has been precleared by the United States Justice Department pursuant to the Voting Rights Act. The Defendant further contends the Washington County Tax Collector and Assessor have no authority to collect City school taxes from residents within the newly annexed territory. Since Section 47 of the Uniform School Law has not been precleared, Section 37-7-611 mandates that the residents of the newly annexed territory automatically become residents of the municipal school district and, accordingly, are subject to the City school taxes.

REQUESTED RELIEF

11. For the reasons set forth above, the Greenville Public School District and the individual members of the Board of Trustees of the Greenville School District request this Court to order a speedy hearing of this action and to enter judgment pursuant to Rule 57 of the Mississippi Rules of Civil Procedure and declare the following:

a. The repeal of Section 37-7-611 of the Mississippi Code of 1972 by Section 47 of the Uniform School Law is void and of no effect until it has been precleared by the Attorney General of the United States.

b. Section 37-7-103 of the Mississippi Code of 1972, as amended, is not in conflict with Section 37-7-611.

c. Plaintiff's request that the Defendant be ordered to pay all costs of this litigation, including attorneys fees, and request such other and further relief as this Court deems appropriate.

This the 15 day of February, 1988.

Respectfully submitted,

GREENVILLE PUBLIC SCHOOL DISTRICT and MARY HAYNES, CAROLYN MORRIS, ANN BRENT, ROY CAMPBELL, III, and JOHN RICHARDS

By Their Attorneys,
MCLEMORE & WARD
BRUNINI, GRANTHAM, GROWER & HEWES

BY: /s/ Clell G. Ward
Clell G. Ward

OF COUNSEL:

CLELL G. WARD
MCLEMORE & WARD
Post Office Box 575
Greenville, Mississippi 38701
(601) 332-4155

W. DAVID WATKINS
J. PERRY SANSING
BRUNINI, GRANTHAM, GROWER & HEWES
Post Office Drawer 119
Jackson, Mississippi 39205
(601) 948-3101

APPENDIX E

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL
TELEFAX NUMBER (601) 359-3796

CARROLL GARTIN JUSTICE BUILDING
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220

TELEPHONE (601) 359-3680

EDWIN LLOYD PITTMAN
ATTORNEY GENERAL

ROBERT M. ARENTSON
Deputy Attorney General

STEPHEN J. KIRCHMAYR
Deputy Attorney General

July 22, 1986

Honorable William Bradford Reynolds
Assistant Attorney General
Civil Rights Division
United States Department of Justice
HOLC Building Room 920
320 First Street, N. W.
Washington, D. C. 20534

Re: Submission of Senate Bill Number 2117, Chapter Number 492, Laws of Mississippi, 1986 Regular Session, An Act Creating the Mississippi Uniform School Law of 1986

(Expedited Consideration Requested)

Dear Mr. Reynolds:

Please find enclosed herein the above referred legislation submitted pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973(c), to the Attorney General of the United States.

Expedited consideration of this submission will be greatly appreciated.

Very Truly yours,

/s/ Edwin Lloyd Pittman
Edwin Lloyd Pittman
Attorney General

/jw
enclosure

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965 AS AMENDED, 42 U.S.C. § 1973

TO: The Attorney General of the
United States of America
The Honorable Edwin Meese, III

SUBMISSION OF SENATE BILL NUMBER 2117, CHAPTER 492, LAWS OF MISSISSIPPI, 1986 REGULAR SESSION, AN ACT CREATING THE MISSISSIPPI UNIFORM SCHOOL LAW OF 1986

EXPEDITED CONSIDERATION REQUESTED

Pursuant to Section 5 of the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. § 1973(c) (hereinafter referred to as Section 5), and the United States Department of Justice's Procedures for the administration of Section 5 of the Voting Rights Act of 1965, as amended, 28 C.F.R. §§ 51.1 *et seq.* (1984), the State of Mississippi, by and through the Attorney General of the State of Mississippi, Edwin Lloyd Pittman, respectfully submits to the Attorney General of the United States, Senate Bill number 2117, Chapter Number 492, Laws of Mississippi, 1986 Regular Session, (hereinafter referred to as Senate Bill Number 2117), which is an act creating the Mississippi Uniform School Law of 1986. In making this submission, the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether Senate Bill 2117 is subject to the preclearance requirements of Section 5. For this submission, the State of Mississippi respectfully states as follows:

28 C.F.R. §§ 51.25(a).

The Attorney General of the State of Mississippi submits for preclearance under Section 5, a certified copy of Senate Bill Number 2117, Chapter Number 492, Laws of Mississippi, 1986 Regular Session, an act creating the Mississippi Uniform School Law of 1986, attached as Exhibit "A". A

copy of the final passage of roll call votes on Senate Bill number 2117 of the Senate and the House of Representatives is attached as Exhibit "B". Also enclosed as Exhibit "C" is a looseleaf booklet entitled "Senate Bill Number 2117—Comparison of Current Law and New Law" which merely sets forth each section of the current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes.

28 C.F.R. § 51.25(b).

This submission is cited as the "Mississippi Uniform School Law of 1986" and is submitted to the Attorney General of the United States in its entirety. The act accomplishes a reorganization and streamlining of laws which govern the operation, financing, and administration of the public schools in Mississippi. Senate Bill number 2117 is reform legislation supplemental to and a logical extension of the Education Reform Act of 1982, adopted by the Mississippi Legislature in 1982. The Education Reform Act mandated public kindergartens statewide, revised teacher and administrator certification requirements, mandated performance based school accreditation and required attendance of administrators in school management institutes, among many other provisions. For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review.

Section 9 amends Section 37-7-301 of the Mississippi Code Annotated (Supplement 1985) and sets out new law in subparagraphs (w)(i) and (w)(ii) for the authority of school boards to lease a school building. Procedurally, the school board will be required to publish notice of the resolution adopted by the school board to lease the building for three (3) consecutive weeks with the first publication being at least thirty (30) days prior to the date of action by the school board on the lease. If no petition requesting an election is filed prior to such meeting, then the school

board may proceed to lease a school building. However, if a petition is filed with the school board prior to the meeting and is signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the school district involved, then an election shall be held on the question of authorizing the school board to lease a school building. If at least three-fifths ($^3/_5$) of the qualified electors of the school district vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. There are two versions of the Amended Section 37-7-301 of the Mississippi Code Annotated (Supplement 1985) presented in Section 9 with the first version effective as of April 15, 1986 and the second version effective as of July 1, 1987. The above described election feature in the new leasing language is identical in both versions.

Section 25 amends Section 37-7-409 of the Mississippi Code of 1972. Subsection (3) authorizes the levy of millage to fund the construction of a school building or facility constructed jointly with another school district. Such joint construction is authorized by Subsections (1) and (2). The present law requires publication of the resolution of intent to make the levy adopted by the school board in a newspaper having general circulation in the county. If a petition is filed by twenty percent (20%) of the qualified electors of the county then an election shall be held on the question of levying the millage. There must be approval of the levy by a majority of the qualified electors of the county before the millage is levied. The amendment contained in Subsection (3) of Section 25 sets forth that the resolution of intent is to be published in a newspaper having general circulation in the school district rather than the county and that if a petition is filed, it must be signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the qualified voters of the school district, rather than the county, in order to call an election. If three-fifths ($^3/_5$) of the qualified electors of the school district, rather

than a majority of the county, vote to approve the levying of the additional taxes, then the levy shall be made within the manner, form and time required by law.

Section 52 amends Section 37-7-103 of the Mississippi Code of 1972. Section 52 sets forth that after July 1, 1987, the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such district. Additionally, the school board with the consent of the school board of the district involved may add to such school district any part of the school district adjoining same or may detach territory from such school district and annex same to an adjoining district. The present law enables the county board of education to create, alter or abolish any school districts of such county, other than the municipal separate school districts. In addition, the county board of education with the consent of the board of trustees of the municipal separate school district involved may add to such municipal separate school districts any part of the county adjoining same or may detach territory from such municipal separate school district and annex same to an adjoining district in the county school system.

Section 53 amends Section 37-7-105 of the Mississippi Code of 1972. This section provides that when a school board abolishes, alters or reorganizes a school district without a petition, a publication of such order must be published in a newspaper having general circulation in such district(s). If no newspaper of such circulation is published in the school district then the order shall be posted in three (3) public places in the school district. If no petition is filed, said order shall become final. However, if a petition signed by twenty percent (20%) of the qualified voters of any school district reorganized, altered or abolished is filed with the school board then an election shall be held on the question of whether or not such district or districts shall be reorganized, altered or abolished. If a majority shall approve the order of the school board then such order

shall become final. There is very little change from the present law to the amended version. The only changes are the allowance of the reorganization of a school board as opposed to the county board of education.

Section 54 amends Section 37-7-107 of the Mississippi Code of 1972 and provides that if a petition signed by two-thirds ($^2/_3$) of the qualified electors of an existing school district is filed with the school board requesting such district be abolished then the school board shall enter an order abolishing such school district. The order shall become final on a date fixed by the school board not later than July 1 next succeeding the date of such order. The only significant change is that the present law used the terminology of county board of education as opposed to school board.

Section 55 amends Section 37-7-109 of the Mississippi Code of 1972 by setting forth that if a petition signed by a majority of the qualified electors filed with the school board requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, then the school board with the approval of the school board of the district to which such territory is to be annexed shall have the power and authority to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. The remainder of Section 55 is the existing language in Section 37-7-109 with the exception that the term school board is used in place of county board of education.

Section 56 amends Section 37-7-111 of the Mississippi Code of 1972. This section sets forth that when any school district is abolished or altered under the provisions of the act, the abolition or alteration shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district

and it is the duty of the board of supervisors to levy taxes on the property of the district abolished or altered from year to year until the indebtedness is fully paid. The only change in that particular section is the inclusion of the terminology altered and alteration.

Section 153 amends Section 37-41-95 of the Mississippi Code Annotated (Supplement 1985) which sets forth certain requirements as to the manner of issuance and form of bonds for school buses and transportation equipment. Present law provides that these bonds shall be issued by either the governing authorities of the county or the municipality depending upon the location of the school district and shall be issued in accordance with Sections 19-9-1 through 19-9-31 or Sections 21-33-301 through 21-33-329 governing issuance of general obligation bonds of the county or city. Other sections of Senate Bill Number 2117 transfer authority for issuing all school bonds from the county or city to the school district. To reflect this change in authority for the issuance of school bonds, Section 37-41-95 is amended by Section 153 to provide that these transportation bonds shall be issued in accordance with Sections 37-59-1 through 37-59-45 of the Mississippi Code Annotated which are the statutes governing issuance of general obligation school bonds. Section 37-59-17 is amended by Section 173 of Senate Bill Number 2117, however, the three-fifths ($^3/_5$) of the qualified electors approval provision is unchanged, therefore, the three-fifths ($^3/_5$) of the qualified electors provision in Section 153 is included for explanatory purposes.

Section 163 amends Section 37-57-105 of the Mississippi Code Annotated (Supplement 1985) which authorizes levy of taxes for the support of the respective school districts. Present law establishes that municipal districts present their funding need to the municipal governing authorities and the authorities shall levy sufficient millage, wherein, county districts present their funding need to the county governing authorities and the authorities may levy suffi-

cient millage. Section 163 amends in pertinent part those provisions relating to the levying authority for the school district by providing that the district shall levy sufficient millage. If the ad valorem tax effort in dollars requested by the school district for the fiscal year exceeds the next preceding fiscal year's ad valorem tax effort in dollars by more than seven percent (7%) but not more than ten percent (10%) then the school board must publish notice for three (3) consecutive weeks in the newspaper in the school district. Further, an election must be held on the amount of the increase in excess of seven percent (7%) but not more than ten percent (10%) if a petition is filed and signed by the lesser number of twenty percent (20%) or fifteen hundred (1500) of the qualified electors of the school district. If a majority of the electors vote in favor of the question then the stated increase requested by the school board shall be approved.

Section 164 amends Section 37-57-107 of the Mississippi Code Annotated (Supplement 1985) which provides that the aggregate receipts from taxes levied for school district purposes shall not exceed the aggregate receipts from those sources during the next preceding fiscal year plus an increase not to exceed ten percent (10%). Section 57-7-107 authorizes tax revenue to exceed ten percent (10%) if an election is held in the school district and a majority of the electors of the district actually vote and if a majority of those voting in the election and approve the increase. Section 164 amends this vote requirement to establish the required vote to be three-fifths ($^3/_5$) of those voting in the election as opposed to the majority of those voting if a majority of the registered voters actually vote.

Section 170 amends Section 37-59-11 of the Mississippi Code of 1972 which sets forth the procedure for the calling of an election on the issuance of bonds. Presently, Section 37-59-11 mandates an election of the question of the issuance of the bonds. The version of Section 170 which is effective until June 30, 1987 mandates an election only if

a petition is filed with the school board calling for an election and is signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the registered voters of the school district. The version of Section 107 effective after July 1, 1987 reinstates the mandatory election prior to the issuance of school bonds.

Section 185 amends Section 37-59-105 of the Mississippi Code of 1972. Present law authorizes the borrowing of money and the issuance of negotiable notes or certificates of indebtedness and sets forth that an election on the question of incurring such indebtedness shall be held if a petition of twenty percent (20%) of the electors of the school district is filed. If a majority of the electors vote in favor of incurring such indebtedness then the governing authorities shall proceed to issue negotiable notes or certificates of indebtedness. Section 185 amends Section 37-59-105, in pertinent part, to change the required vote to three-fifths ($^3/_5$) of the qualified electors voting in said election.

Section 203 is new law which mandates an election in certain school districts at the November, 1988 general election. Section 203 requires the county governing authorities in any county wherein the position of county superintendent of education remains elective as of July 1, 1986, to publish notice of the election for three (3) consecutive weeks and to hold an election at the general election in November, 1988, on the sole question of whether the superintendent shall remain an elected office or shall be abolished. Present law allows the superintendent of schools to be elected in districts under the designation of county school districts.

28 C.F.R. § 51.25(c).

The person making this submission is Edwin Lloyd Pittman, the Attorney General of the State of Mississippi and the Chief Legal Officer for the State of Mississippi, whose address is Post Office Box 220, Jackson, Mississippi 39205,

and whose telephone number is (601) 359-3680. Lynn Fitch Mitchell, Special Assistant Attorney General, with Attorney General Pittman's staff, should be contacted concerning this submission.

18 C.F.R. § 51.25(d).

The name of the submitting authority and the jurisdiction responsible for the enactment of the statutes under submission is the State of Mississippi.

28 C.F.R. § 51.25(e)

Not applicable.

28 C.F.R. § 51.25(f)

The Legislature of the State of Mississippi was responsible for enacting the statutes under submission.

28 C.F. § 51.25(g).

The legislative power of the State of Mississippi is vested in a legislature which shall consist of a senate and a house of representatives as set forth by Article 4, Section 33 of the Mississippi Constitution. Article 4, Section 59 of the Mississippi Constitution provides that bills may originate in either house and Article 4, Section 62 provides that no amendment to bills by one house shall be concurred in by the other except by a vote of the majority thereof. Article 4, Section 71 denotes that every bill introduced into the legislature shall have a title which clearly indicates the subject matter or matters of the proposed legislation. Further, Article 4, Section 72, sets out that every bill which passes both houses shall be presented to the Governor for his signature; but if he does not approve such bill, he shall return it, with his objections, at which point, both houses shall reconsider such bill and upon a two-thirds ($^2/_3$) vote of each house, it shall become a law.

28 C.F.R. § 51.25(h).

Senate Bill Number 2117 was approved on April 15, 1986.

28 C.F.R. § 51.25(i).

The entire act set forth by Senate Bill Number 2117 shall be in effect after July 1, 1987 as denoted by Section 205. This section further provides that Sections 9, 70, 76, 170, 186 and 188 of the act shall take effect after passage and that Sections 162, 163, 164 and 202 of the act shall take effect after July 1, 1986. This section also provides that Section 203 of the act shall take effect after it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

28 C.F.R. § 51.25(j).

The Attorney General of Mississippi cannot state that Senate Bill Number 2117 under submission has not yet been enforced or administered because particular sections of such bill are authorized effective as of July 1, 1986. The Attorney General can state that the sections denoted under Senate Bill Number 2117 which are to be effectuated at a later date or upon preclearance from the United States Department of Justice under Section 5 of the Voting Rights Act of 1965, as amended and extended, have not yet been enforced or administered.

28 C.F.R. § 51.25(k).

Senate Bill Number 2117 does affect the entire State of Mississippi.

28 C.F.R. § 51.25(l).

The changes set forth in Senate Bill Number 2117 were made as part of a comprehensive reorganization and restructuring of the laws governing the administration and operation of the public schools of Mississippi. Further, the act grants to the governing boards of the school districts a measure of fiscal independence to meet the funding needs of each respective district. Mississippi schools currently operate under four different kinds of school district with each district having its own system of government and

finance. It appears that if there were only one type d district so that all laws pertaining to districts would appl to each district in the state, rather than special laws fo special types of districts, the administration and operatio of school districts would be more effective and benefici to the state.

The act in the entirety with special emphasis placed o the denoted sections establishes no changes in qualifica tions or registration for voting, procedures for voting ab sentee ballots, district lines, precincts or polling place The particular sections with the exception of Section 20 speak primarily to the publication requirements of notic of intent of action of the school board, the procedure fo filing a petition, the required number of signatures on th petition to call an election, the number of qualified voter necessary to approve or disapprove action of the schoo board and the procedure to reorganize or abolish a schoo district.

Section 203 is new law which mandates an election i school districts in November, 1988, concurrent with th general elections in that year. The election is to be hel on the sole question of whether the superintendent sha remain an elected office or whether the elected positio shall be abolished and the superintendent shall be ap pointed by the school board. There is no indication of th number of school districts that will vote to abolish th office of superintendent as an elected position and requir the office to be filled by appointment. When a majorit of qualified electors vote to abolish such office, the abo ishment is to be effective at the end of the regular ter of office or whenever a vacancy shall occur in the offic

It would appear that the intention of the legislature wa to provide the electors adequate time to consider the re erendum and thus make a decision of whether to have a elected superintendent or an appointed superintenden Section 203 seems to provide, although somewhat un

clearly, that if the qualified electors vote to abolish the elected office of superintendent then that position is to become an appointed position. Section 203 deals directly with Section 60 of Senate Bill Number 2117 which provides that each school district shall have a superintendent of schools selected in the manner provided by law. Accordingly, the implication is that a superintendent shall be either as an elected official or as an appointed official. Thus, the apparent intention of the legislature is to provide the electors with an opportunity to vote on the issue of whether to have an elected or an appointed superintendent and then implement the chosen position.

28 C.F.R. § 51.25(m).

Senate Bill Number 2117 did not and will not adversely affect racial or language minority groups, did not and will not effect members of racial or language minority groups and does not and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

28 C.F.R. § 51.25(N).

Not applicable.

28 C.F.R. § 51.25(O).

Senate Bill Number 2117, the comprehensive set of statutes creating the Mississippi Uniform School Law of 1986, under submission has not yet been precleared by the United States Department of Justice.

28 C.F.R. § 51.25(p).

This submission does not concern a redistricting, annexation or other complex change; therefore, no further information is supplied as supplemental contents suggested by C.F.R. § 51.26.

Pursuant to 28 C.F.R. § 51.32, the State of Mississi
respectfully requests that this submission be given *ex*
dited consideration.

If the Attorney General of the United States needs
further information concerning this submission, the St
of Mississippi will attempt to supply it.

This, the 22 day of July, 1986

Respectfully submitted,

STATE OF MISSISSIPPI

BY: /s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN, ATTORNEY GENER
STATE OF MISSISSIPPI

Attorney and Chief Legal Officer
for the State of Mississippi

Lynn Fitch Mitchell
Special Assistant Attorney General
Executive Assistant
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

APPENDIX F

SENATE BILL NUMBER 2117—COMPARISON OF CURRENT AND NEW LAW

INTRODUCTORY NOTE

This booklet sets forth on a section by section basis each section of the current law which has been amended followed by each individual section of Senate Bill Number 2117, Laws of Mississippi, 1986 Regular Session. Where the sections of Senate Bill Number 2117 are new law then only those particular sections will be denoted with no comparison of current law. This section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law. Each section of Senate Bill Number 2117 which is the version of the bill as sent to the governor is marked to show the changes made in the current law. Underlining indicates language added and a check mark indicates language deleted. By comparing each section of Senate Bill Number 2117 and the current practice, the changes to current law are easily identified.

§ 37-7-301. Powers and duties of boards of trustees.

The boards of trustees of school districts shall have the following powers, authority, and duties in addition to all others imposed or granted by law, to wit:

(a) To organize the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school. In the event the board of trustees provides for a high school of six grades, the lower division thereof may be designated as the junior high school and the higher division thereof may be designated as the senior high school, all in the discretion of the board of trustees;

SECTION 9. Section 37-7-301, Mississippi Code of 19
is amended as follows:

(Through June 30, 1987, this section shall read as
lows:)

37-7-301. The boards of trustees of school districts s
have the following powers, authority, and duties in a
tion to all others imposed or granted by law, to wit:

(a) To organize the schools of the district and to m
such division between the high school grades and elem
tary grades as, in their judgment, will serve the best
terests of the school. In the event the board of trust
provides for a high school of six grades, the lower divis
thereof may be designated as the junior high school
the higher division thereof may be designated as the se
high school, all in the discretion of the board of trust

(b) To introduce public school music, drawing, manual training, and other special subjects into either the elementary or high school grades, as the board of trustees shall deem proper;

(c) To be the custodians of the school property and to manage, control, and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing, and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds;

(b) To introduce public school music, drawing, manual training, and other special subjects into either the elementary or high school grades, as the board of trustees shall deem proper;

(c) To be the custodians of the school property and to manage, control, and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing, and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds;

(f) To visit each school in the district in a body at least once during the session for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To assist the superintendent, principal, and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools, children of filthy or vicious habits, and children suffering from contagious or infectious diseases;

(i) To require, upon the recommendation of the state board of health, and the county health officer in whose health jurisdiction the school rests, the vaccination of school children against smallpox, typhoid fever, poliomyelitis or other contagious or infectious diseases and to require chest X-rays as soon as practicable, and to exclude from the schools children who have not been so vaccinated, as soon as practicable. However, the provisions hereof shall not apply to children whose parents or guardians are certified by an officer of their church to be bona fide members of a recognized denomination whose religious teachings require reliance on prayer or spiritual means for healing. It is further provided that no child shall be required to submit to any vaccination where the parent has caused to be filed with the board of trustees a certificate of a physician that such vaccination would be dangerous to the health or safety of such child;

(f) To visit each school in the district in a bod least once during the session for the purpose of d mining what can be done for the improvement of the s in a general way;

(g) To assist the superintendent, principal, and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools, children of filthy or vicious habits, and children suffering from contagious or infectious diseases;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37, Mississippi Code of 1972;

IV(B).

SECTION 47 OF CHAPTER 492 (1986) INSOFAR AS IT REPEALS SECTION 37-7-611, MISSISSIPPI CODE OF 1972 HAS NEITHER THE PURPOSE NOR THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE

(THE PURPOSE)

In the state's submission of the repeal of Section 37-7-611, as well as in the response to the request for additional information, the state described the purpose behind the repeal as part of an overall purpose underlying Chapter 492 of placing all school districts on an equal footing by granting to all districts the same prerogatives, powers, duties, and privileges as provided in this act.

Apparently, the statements in our submission that the repeal of Section 37-7-611 was subject to little legislative debate and was considered a housekeeping measure have been misinterpreted as minimizing the educational importance of the repeal of Section 37-7-611. As set forth in our submission and our subsequent response to the request for additional information, the repeal of Section 37-7-611 was considered essential to effectuating the purpose of Chapter 492. The **"Report of the Senate Interim Committee to Study Public School Finance and Administration in Mississippi"**, as set forth in our earlier response, stated in part:

> Several types of districts in existence today are still serving well but there are flaws in each. It appears that if there were only one type of district so that all of the laws pertaining to districts would apply to each district in the state, rather than special laws for special types of districts, the administration and operation of school districts would be more effective and beneficial to the state.

If the Attorney General's objection to the repeal of Section 37-7-611 is ultimately interpreted as requiring the automatic acquisition of territory, students and personnel of adjacent county or consolidated school districts by municipal separate school districts involved in municipal annexations, then the Attorney General's objection, under the guise of protecting unaffected minority voting rights, totally frustrates the above educational purpose.

It should be pointed out that in view of *Prentiss County Annexation Committee v. City of Booneville*, 551 So.2d 890 (Miss. 1989) and *Dotson v. City of Indianola*, 514 F.Supp. 397 (N. D. Miss. 1981) and the language of 42 U.S.C. §1973c, the sole effect of the Attorney General's objection could be limited to precluding the participation of newly annexed voters in municipal elections if such voters reside within the boundaries of an adjacent county or consolidated school district. As set forth in a proposed law review article entitled "Impact of the Voting Rights Act of 1965 Upon the Uniform School Law of 1986" by J. Robertshaw, a copy of which is attached hereto as Appendix "F", the Attorney General's objection to the repeal of Section 37-7-611 could be interpreted as not affecting where school age children attend school and which school district will levy and receive school taxes. Quoting directly from the proposed article at page 11:

> Thus, the sole remedy for failure to obtain preclearance is a ban on enforcement of any "qualification, prerequisite, standard, practice or procedure **with respect to voting.**" In **Dotson,** there being no "de-annexation", residents of the un-precleared annexations were not allowed to vote or run for municipal services. Here, there is a possibility residents of the annexed portion of PCSD may not vote for aldermen or councilmen, whichever, but whatever the AGUS does they will continue to pay school taxes to PCSD, and PCSD will continue to educate pupils from

> that territory. This is the **substantive** effect of repealing § 37-7-611, totally unrelated to any "qualification, prerequisite, standard, practice or procedure with respect to voting."

By submitting this request for reconsideration of the Attorney General's objection to the repeal of Section 37-7-611, the State of Mississippi does not waive its right to argue that the effect of the objection is limited to the voting concerns only and does not extend to the issue of where children will attend school nor to the issue of which school district will levy and receive taxes.

1. The Affidavit of Senator Irb Benjamin.

In support of this request for reconsideration, the State of Mississippi submits that consideration be given to the matters contained in the attached affidavit of Senator Irb Benjamin, Chairman of the Senate Education Committee of the Mississippi Legislature. As set forth in this affidavit, the clear purpose of the repeal of Section 37-7-611 was to protect the ad valorem tax base available to county school systems in the path of municipal expansion. As Senator Benjamin states, there was considerable evidence prior to the enactment of Chapter 492 that educational opportunities available to students residing in rural areas of our state were substandard to those offered to students residing in urban areas. This affidavit is attached as Appendix "G".

2. The 1986 Annual Report of the State Superintendent of Public Education (Section VII).

Additional support of this legislative finding is found in the 1986 Annual Report of the State Superintendent of Public Education, a copy of Section VII (pages 143-153) of which is attached hereto as Appendix "H".

In the 1986 Annual Report of the State Superintendent of Public Education revenue and expenditure statistics were presented for the 1984-85 school year. According to

that report, there were 154 school districts in the State of Mississippi. Fifty-eight (58) of these were municipal separate school districts and the remaining ninety-six (96) were county school districts and consolidated school districts.

The superintendent's report at pages 150 through 153 ranks the school districts according to wealth per average pupil unit and ad valorem tax collected per average pupil unit. The school districts are listed first by county district or consolidated district, followed, where appropriate, by the municipal district(s) in that county.

For purposes here, the lower one-third in ad valorem tax collected per average pupil unit are listed in descending order:

1984 - 1985

SCHOOL DISTRICTS WITH LOWEST AD VALOREM TAX COLLECTED PER AVERAGE PUPIL UNIT

154 Nettleton Line Cons.
153 Neshoba County Dist.
152 Union County Dist.
151 North Tippah Cons.
150 Prentiss County Dist.
149 Oktibbeha County Dist.
148 Wilkinson County Dist.
147 Durant Mun. Separate
146 Alcorn County Dist.
145 Marshall County Dist.
144 Canton Mun. Separate
(128) Simpson County Dist.
(127) Water Valley Cons.
(126) Pontotoc County Dist.
(125) Holmes County Dist.
(124) Benton County Dist.
(123) Wayne County Dist.
(122) West Jasper Cons.
(121) Choctaw County Dist.
(120) Lee County Dist.
(119) South Tippah Cons.
(118) East Tallahatchie Cons.

143 Lauderdale County Dist.
142 Baldwyn Mun. Separate
141 Leake County Dist.
140 Monroe County Dist.
139 Newton County Dist.
138 Chickasaw County Dist.
137 Anguilla Line Cons.
136 Enterprise Cons.
135 Calhoun County Dist.
134 Pearl River County Dist.
133 George County Dist.
132 Scott County Dist.
131 Tate County Dist.
130 Greene County Dist.
129 Tishomingo County Dist.
(117) South Panola Cons.
(116) Iuka Mun. Separate
(115) Lafayette County Dist.
(114) Jefferson Davis County Dist.
(113) Lowndes County Dist.
(112) Webster County Dist.
(111) Lincoln County Dist.
(110) Richton Mun. Separate
(109) Walthall County Dist.
(108) Copiah County Dist.
(107) Sunflower County Dist.
(106) Jefferson County Dist.
(105) Noxubee County Dist.
(104) Marion County Dist.

Of the above fifty-one (51) school districts which during the 1984-1985 school year had the lowest ad valorem tax collected per average pupil unit, forty-six (46) were county school districts or consolidated districts. Only five (5) of these districts were municipal separate school districts. The repeal of Section 37-7-611 was considered vital to the protection of the ad valorem tax base of these county school districts and consolidated school districts.

THE EFFECT

The repeal of Section 37-7-611 and the amendment to Section 37-7-103 by Section 52 of Chapter 492 would have the effect of furthering the overall purpose of Chapter 492. Chapter 492, Section 52 was precleared under Section 5 on August 29, 1986. It amends Section 37-7-103 by providing as follows:

> "37-7-103 from and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called

> for that purpose to abolish such existing district, or to reorganize, change or alter the boundaries of any such district. In addition, thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same and with the consent of the school board of the school board of the school district involved, may attach territory from such school district and annex same to an adjoining district.

The purpose underlying Section 37-7-103 was to allow school districts to alter their boundaries in cooperation with adjoining districts without giving any one district the right to take territory, students and teachers from the other. This is an educational policy decision made by the Mississippi Legislature and it offends all notions of federal/state relations for the Attorney General to supplant the policy decisions of the state by vetoing this policy on non-existent voting concerns.

As the Department of Justice is fully aware from its experience with municipal annexations. One of the most frequent objections to municipal annexation is the disruption it causes to adjoining school districts. The reason for this disruption is Section 37-7-611.

3. Deposition of Jauney Lynn.

The Mississippi Association of Educators is very interested in the repeal of Section 37-7-611 due to its disruptive effect on schools, teachers, students and education in Mississippi. Attached hereto as Appendix "I" is a copy of a deposition of Jauney Lynn, the former Director of the Mississippi Association of Educators which illustrates some of the problems caused by the automatic extension of school boundaries resulting from municipal annexations. The MAE is an objector in the Gulfport, Mississippi annexation proceeding because of the disruptive effect of Section 37-7-611 on the adjacent school district.

4. Affidavit of Joseph A. Luesteck.

The requirements of Section 37-7-611 have also been problematic for municipalities in their expansion efforts. Mr. Joseph A. Leusteck a city planner who has testified as an expert witness for various municipalities in connection with municipal annexations describes in his affidavit the problems Section 37-7-611 causes municipalities and further demonstrates the fact that there is no logical relationship between the factors and considerations which support municipal expansions and those that support the expansion of school boundaries. In addition Mr. Luesteck's affidavit also describes the disruptive aspects of Section 37-7-611 on school districts. The affidavit of Joseph A. Luesteck is attached hereto as Appendix "J".

It is clear from the above that the real effect of the repeal of Section 37-7-611 is that increased educational opportunities can be given to students in county school districts, that municipal expansions can proceed uninhibited by factors which bear no real relationship to the issue of municipal expansions and that the disruptive effect that Section 37-7-611 has on schools, teachers, students and education in Mississippi will be removed.

IV(C)

THE EFFECT OF THE REPEAL OF SECTION 37-7-611 SET FORTH IN THE MARCH 31, 1989 OBJECTION LETTER IS BASED ON ERRONEOUS FACTUAL AND LEGAL CONCLUSIONS

The March 31, 1989 objection letter is predicated on the fact that in Mississippi municipalities are becoming increasingly black and that suburban and rural areas are becoming increasing white. This is incorrect. While these demographic trends may exist in highly urbanized and industrialized states of the North and Northeast they do not exist in Mississippi.

Mississippi has fifty seven (57) municipalities that have municipal separate school districts. Thirty three (33) of these municipalities have populations under 10,000 and twenty four (24) have populations above 10,000.

With respect to the thirty three (33) municipalities with populations under 10,000 only seven (7) reflected a loss in white population between 1970 and 1980. Of these seven (7) municipalities, one municipality, Hazlehurst, Mississippi, also reflected a loss in black population. Accordingly, only six (6) municipalities of the thirty three (33) municipalities that have populations under 10,000 reflected a loss in white population with no loss in black population. Significantly, the total combined loss in white population for these six (6) municipalities is 417 persons.

The above demographic findings are reflected by the following table which is based in 1970 and 1980 census figures.

(TABLE I)

MISSISSIPPI MUNICIPALITIES WITH POPULATIONS UNDER 10,000 WHICH HAVE SEPARATE MUNICIPAL SCHOOL DISTRICTS

	1970 Population		1980 Population	
Municipality	White	Black	White	Black
Aberdeen	3,621	2,533	4,028	3,142
Amory	5,509	1,726	5,632	1,660
Baldwyn	1,539	826	2,171	1,250
Bay St. Louis	5,323	1,416	6,370	1,433
Booneville	4,991	903	5,361	815
Clinton	6,584	658	13,506	1,059
Columbia	5,452	2,117	5,649	2,060
Drew	1,365	1,194	1,217	1,301
Durant	1,406	1,344	1,359	1,528
Forrest	2,655	1,423	2,975	2,241
Hazlehurst	1,956	2,617	1,863	2,568
Holly Springs	2,317	3,389	2,633	4,618

Houston	2,004	712	2,627	1,112
Indianola	3,903	5,000	4,047	4,148
Iuka	2,132	257	2,524	274
Kosciusko	4,599	2,644	4,591	2,798
Long Beach	5,866	246	7,383	414
Louisville	4,080	2,539	4,207	3,097
New Albany	4,877	1,543	5,463	1,586
Newton	2,250	1,299	2,148	1,552
Ocean Springs	8,773	783	13,254	1,009
Okolona	1,945	1,057	1,939	1,461
Pass Christian	2,110	862	3,199	1,720
Pearl	9,599	10	18,307	2,341
Petal	6,812	162	8,295	159
Philadelphia	4,335	1,907	4,447	1,832
Pontotoc	2,882	567	3,959	751
Richton	792	316	880	324
Ridgeland	1,538	109	4,854	565
Senatobia	3,060	1,182	3,523	1,467
Union	1,299	553	1,320	606
West Point	4,925	3,783	4,819	3,955
Winona	3,319	2,195	3,830	2,341

Furthermore, of the above thirty three (33) municipalities only five (5) municipalities have majority black populations according to the 1980 census figures i.e. Drew, Durant, Hazlehurst, Holly Springs, and Indianola, Mississippi.

With respect to the twenty four (24) municipalities that have separate municipal school districts and have populations over 10,000 only thirteen (13) reflected a loss in white population between 1970 and 1980 (not included in the summary are Biloxi and Gulfport which suffered a unique loss of population between 1970 and 1980 due to hurricane Camille and the reduction in military forces at Keesler Air Force Base following the end of the Vietnam War.)

Of these thirteen (13) municipalities losing white population between 1970 and 1980, three (3) Laurel, Greenwood and Oxford reflected a loss in both white and black population. Of the remaining ten (10) municipalities the total combined loss in white population is only 13,672.

The above demographic findings are reflected by the following table which is based on 1970 and 1980 census figures.

(TABLE II)

MISSISSIPPI MUNICIPALITIES WITH POPULATIONS OVER 10,000 WHICH HAVE SEPARATE MUNICIPAL SCHOOL DISTRICTS

	1970 Population		1980 Population	
Municipality	White	Black	White	Black
Brookhaven	6,650	4,037	6,421	4,358
Canton	4,550	5,946	3,823	7,269
Clarksdale	9,840	11,703	7,984	13,022
Cleveland	8,284	4,919	8,674	5,711
Columbus	16,021	9,721	15,070	12,126
Corinth	9,337	2,228	11,332	2,446
Greenville	18,835	20,619	16,181	24,137
Greenwood	11,118	11,130	9,510	10,460
Hattiesburg	27,133	11,024	26,295	13,995
Jackson	92,651	61,063	106,285	95,357
Laurel	15,201	8,914	13,191	8,661
McComb	7,971	3,990	7,807	4,469
Meridian	29,880	15,106	28,916	17,397
Moss Point	10,929	8,366	6,518	12,437
Natchez	9,733	9,959	10,514	11,447
Oxford	11,323	2,362	7,635	2,098
Pascagoula	23,663	3,564	24,005	4,920
Picayune	6,932	3,531	6,961	3,351
Starkville	8,479	2,798	11,019	3,823

Tupelo	16,874	3,579	19,447	4,327
Vicksburg	12,824	12,568	11,956	13,331
Yazoo City	4,312	6,469	6,325	6,049

Of the above twenty four (24) municipalities, only seven (7) have majority black populations according to the 1980 census figures i.e. Canton, Clarksdale, Greenwood, Moss Point, Natchez, Vicksburg and Greenville. Two (2) of these municipalities Natchez and Vicksburg have county-wide districts and accordingly are not relevant to the issue involved with the repeal of Section 37-7-611.

The Attorney General's March 31, 1989 objection to the repeal of Section 37-7-611 is based on the erroneous demographic finding that there is a trend in the state of blacks migrating to the cities and whites migrating out of the cities. As demonstrated above, there is no such trend in Mississippi. Accordingly, the Attorney General's objection should be withdrawn.

Furthermore, the Attorney General's March 31, 1989 objection to the repeal of Section 37-7-611 relies on statistics from the Mississippi State Department of Education which indicate that approximately half the municipal school districts in the state have a student population that is majority black and about two-thirds are 40 percent black or higher. Student enrollment population cannot properly serve as basis for measuring the effect of a voting change under Section 5 of the Voting Rights Act. Only total population or total voting age population can be relied upon to measure whether a voting change has a retrogressive effect. *Burns v. Richardson*, 384 U.S. 73 (1966); *Martin v. Venables*, 401 F.Supp. 611 (1975); *Klahr v. Williams*, 313 F.Supp. 148 (1970), aff'd sub nom., *Ely v. Klahr*, 403 U.S. 108 (1971); *Borneau v. Thornton*, 235 F.Supp. 175 (1964), 379 U.S. 15 (1964).

Perhaps the most critical point that can be made in connection with the absence of any adverse effect that repealing Section 37-7-611 will have on minority voters is

that even if the demographic trends cited in the Attorney General's March 31, 1989 letter were correct, the objection is still unwarranted.

To understand this point, assume that a majority black municipality or a municipality with a significant black voting age population annexes territory that is predominantly white. Here, the Attorney General's letter strains to articulate an adverse effect on minority voting. The purported adverse impact is that these newly annexed white voters will impact the selection of the governing authorities who in turn will appoint the school board members. In struggling to find and articulate an adverse impact on minority voting rights, the Attorney General has overlooked the fact that the above result will occur with or without Section 37-7-611. If a group of voters are annexed into a municipality, they will impact the selection of the governing authorities. The Attorney General cannot properly base his objection on a result that will occur with or without his objection. This, then is a non-issue. If the effect of the objection is interpreted as not affecting where students attend school and which district receives taxes, then its only effect would be that newly annexed voters could not participate in municipal elections if they reside within the boundaries of a county or consolidated school district. If a municipal annexation is precleared under Section 5, such preclearance would mean that the influx of such voters would not operate to diminish black voting strength within the municipality. Not to allow these voters to participate in municipal annexation because of a standing objection to the repeal of § 37-7-611 will have an effect that no one, including the Justice Department, could view as desirable. Another non-issue is the corresponding effect that these newly annexed voters will have on the selection of the school trustees in the adjoining county district or consolidated district. Again, assuming these rural or suburban districts are majority white, as the Attorney General's letter assumes, then allowing the newly annexed

white voters to vote for the trustees of county or consolidated school districts cannot minimize black voting strength. This is especially true in light of the new requirements of Chapters 444 and 523 (1988) which require single member districts for county and consolidated school districts. Furthermore, the repeal of Section 37-7-611 has the effect of preserving the status quo with respect to the racial composition of the adjacent countywide consolidated school districts and under *Beer v. United States*, 425 U.S. 130 (1976), preserving the status quo cannot violate Section 5.

Since municipal school board members are appointed, the only school election that these voters can participate in is school bond elections. Section 37-59-15, Miss. Code Ann. (Supp. 1989) governs the conduct of school bond elections. It provides in part as follows:

> **§ 39-59-15 Conduct of Election**
>
> Such election shall be held upon order of the school board, as for as is practicable, in the same manner as other elections are held in such county or municipality. *At such election, all qualified electors of such school district may vote.* (Emphasis added.)

The statute requires that only qualified electors of the school district can vote in such an election. It is this election that the Attorney General must use in measuring the effect of the repeal of Section 37-7-611 on minority voters. Viewing this type of election, in light of the factual situation relied upon by the Attorney General, and also assuming racial bloc voting, which the Attorney General always does, the only possible result that the repeal of Section 37-7-611 can have on minority voters in municipal separate school districts is an ameliorative one. The repeal of Section 37-7-611, under these assumed facts, can only enhance minority voting strength in municipal school bond elections. Under *Beer v. United States*, 425 U.S. 130 (1976),

if a change that affects voting "enhances the position of racial minorities with respect to their effective exercise of the electoral franchise, [it] can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5" 425 U.S. at 141.

If the repeal of Section 37-7-611 is precleared, the newly annexed white voters would not automatically participate in municipal school bond elections since they would not be included in the district unless they were brought in under Section 37-7-103, which would require Section 5 preclearance. If Section 37-7-611 is not precleared, then these newly annexed white voters could minimize the black voting strength in any school bond election. Either the Attorney General completely overlooked this fact, which we hope is the case, or he ignored his Section 5 responsibility to effectuate an educational goal that is unrelated to his responsibilities under Section 5.

APPLICATION OF SECTION 2 OF THE VOTING RIGHTS ACT TO SECTION 5 PRECLEARANCE SUBMISSIONS IS PROHIBITED

To the extent that the Attorney General's objection to the repeal of Section 37-7-611 is in any way predicated on Section 2 considerations, as hereinafter set forth, such an application of Section 2 considerations to a Section 5 submission is prohibited.

Under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, certain states and political subdivisions subject to the Act may not enforce "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting [hereinafter 'procedure'] different from that in force or effect on November 1, 1964," unless they have obtained a declaratory judgment from the United States District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account

of face or color," or have submitted the proposed change to the United States Attorney General and the Attorney General has "precleared" the change, *i.e.*, has not objected to it within 60 days of the submission.

The purpose of Section 5's preclearance requirement was set forth by the Supreme Court in *Beer v. United States*, 425 U.S. 130, 140-141 (1976):

> The legislative history reveals that the basic purpose of Congress in enacting the Voting Rights Act was "to rid the country of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S., at 315. Section 5 was intended to play an important role in achieving that goal:
>
> > "Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old one had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory. . . . Congress therefore decided, as the Supreme Court held it could, 'to shift the advantage of time and inertia from the perpetrators of the evil to its victim,' by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.' " H.R. Rep. No. 94-196, pp. 57-58. (Footnotes omitted.)
>
> * * *
>
> By prohibiting the enforcement of a voting-procedure change until it has been demonstrated to the United States Department of Justice or to a three-judge federal court that the change

> does not have a discriminatory effect, Congress desired to prevent States from "undo[ing] or defeat[ing] the rights recently won" by Negroes. H.R. Rep. No. 91-397, p. 8. Section 5 was intended "to insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques." S. Rep. No. 94-295, p. 19.

In sustaining the constitutionality of the preclearance requirement, the Supreme Court acknowledged that this suspension of new voting regulations pending federal scrutiny is "an uncommon exercise of congressional power," but observed that it was adopted solely to bar new retrogressive State enactments, and its constitutionality was sustained on this basis. *South Carolina v. Katzenbach*, 383 U.S. 301, 334-35 (1966).

In *Beer*, the lower court interpreted § 5 as barring preclearance of statutes which *dilute voting power*, and looked to " 'access to the political process * * * [as] the barometer of dilution of minority voting strength.' " 374 F. Supp. 363, 384 (D.D.C. 1974), *quoting Zimmer v. McKeithen*, 485 F.2d 1297, 1303 (5th Cir. 1973) (en banc), *aff'd on other grounds, East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636 (1976). In determing whether " 'the political processes leading to nomination and election were * * * equally open to participation by the group in question— [or whether] its members had less opportunity than did other residents of the district to participate in the political processes and to elect legislators of their choice,' " this Court relied upon cases interpreting § 2 as imposing the equivalent of the "results" test and looked to the factors traditionally applied and the evidence ordinarily adduced under that test. *Beer*, 374 F. Supp. at 384.

On appeal of the Beer case to the Supreme Court, the United States argued that the lower court "properly held

that dilution of voting strength on a racial basis is encompassed within the 'denying or abridging the right to vote' standard of Section 5 of the Voting Rights Act." [Brief for the United States (No. 73-1869), attached hereto as Appendix "K", p. 11.

The Supreme Court rejected this argument despite its express acknowledgment "that the basic purpose of Congress in enacting the Voting Rights Act was 'to rid the country of racial discrimination in voting.' " 425 U.S. at 104-41, *quoting Katzenbach*, 383 U.S. at 315. *Beer*, accordingly, forecloses any denial of preclearance based upon any standard other than retrogression and discriminatory purpose.

In its Reply Brief in *City of Lockhart v. United States*, 460 U.S. 125 (1983), the United States recognized the limits of Section 5, and stated:

> The 1982 amendments make no changes in the existing preclearance standards in Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. * * *
>
> * * *
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> Under appellee Cano's interpretation, Congress has expanded Section 5 to include an assessment of not only the "purpose" and "effect," but also the "results" of all proposed voting changes—and has done so without making any change in the language of Section 5. In these circumstances, we caution against according controlling significance to the references in the legislative history cited by appellee Cano. Cf. *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979); *SEC v. Sloan*, 436 U.S. 103, 121 (1978). The Court in *Beer v. United States, supra*, construed the "effects" standard in Section 5 to mean only "retrogression." The 1982 amendments to the Voting Rights

> Act suggest no congressional intent to overrule *Beer*. [Reply Brief for the United States, No. 81-802 (Appendix "L" hereto), pp. 2-4.]

By contrast, Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, as originally enacted and as subsequently amended, has an entirely different focus and provides entirely different remedies. As originally enacted, Section 2 tracked the language of the Fifteenth Amendment, prohibiting all states and political subdivisions from imposing or applying laws "to deny or abridge the right of any citizen of the United States to vote on account of race or color."[1] Under the leading lower court case of *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd on other grounds, East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636 (1976), plaintiffs could prevail in a Section 2 case either by proving discriminatory intent or discriminatory "results," *i.e.*, by showing that the electoral system resulted in a denial of equal access to the political process. However, in 1980, a plurality of the Supreme Court held that proof of discriminatory "results" alone was insufficient to establish a violation of the Fifteenth Amendment and Section 2. The Court required proof that a contested electoral mechanism was intentionally adopted for a discriminatory purpose in order to establish such a violation. *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

In reaction to *City of Mobile*, Congress in 1982 amended Section 2 to prohibit any state practice "which results in a denial or abridgement of the right * * * to vote on ac-

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[1] Section 2 provided:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

Pub. L. No. 89-110, § 2, 79 Stat. 437 (1965).

count of race * * *. A violation of [Section 2] is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial minority] * * * in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 96 Stat. at 134, codified at 42 U.S.C. § 1973 (1986). The legislative history of the amendment to Section 2 explains that the new language was intended "to make clear that proof of discriminatory intent is not required to establish a violation of Section 2." S. Rep. No. 417, 97th Cong., 2d. Sess. 2.

The Supreme Court has frequently observed that "the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Produce Safety Com'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1982). Section 5 states what the standard in a preclearance proceeding will be, and that standard differs materially from the standard under Section 2 as amended in 1982.

Section 5 provides, in pertinent part, that a covered state or political subdivision may institute an action in this Court "for a declaratory judgment that [a new voting] qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color * * *." By contrast, Section 2, as amended in 1982, provides in pertinent part that a violation

> is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its

> members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 42 U.S.C. § 1973.[2]

Section 2 was in 1982, and is now, understood to establish a "results" test, as opposed to the retrogressive "purpose and effect" test of Section 5.

In the Voting Rights Amendments of 1982, Congress reenacted Section 5 without altering it by so much as a single word. This circumstance is clear evidence against any contention that Congress intended to change the standard of Section 5. The situation parallels that in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982). Against the background of Supreme Court decisions construing the statute, "the fact that a comprehensive reexamination and significant amendment of the

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[2] The amended Section 2 reads in full:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of face or color, or in contravention of the guarantees set forth in section 4(f)(2) as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

[Voting Rights Act] left intact the statutory provisions under which [preclearance was to be granted if the State could establish that there had been no retrogressive purpose or effect] is itself evidence that Congress affirmatively intended to preserve that [standard]." *Cf. id.* at 381-82. As the Court noted:

> "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change, see *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414, n.8 (1975); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951); *National Lead Co. v. United States*, 252 U.S. 140, 147 (1920); 2A C. Sands, Sutherland on Statutory Construction § 49.09 and cases cited (4th ed. 1973)."

Merrill Lynch, 456 U.S. at 382 n.66, *quoting Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978).

This principle was followed with respect to Section 5 itself in *Georgia v. United States*, 411 U.S. 526 (1973). The question there was whether Section 5 applies to election law changes which were undertaken as part of a State reapportionment of its legislative districts. The Court had held that it does so in *Allen v. State Board of Elections*, 393 U.S. 544 (1969). Referring to the *Allen* decision, the Court said in *Georgia*:

> Had Congress disagreed with the interpretation of § 5 in *Allen*, it had ample opportunity to amend the statute. After extensive deliberations in 1970 on bills to extend the Voting Rights Act, during which the *Allen* case was repeatedly discussed, the Act was extended for five years, without any substantive modification of § 5. Pub. L. 91-285, 84 Stat. 314, 315. We can only conclude, then, that *Allen* correctly interpreted the congressional design * * *.

411 U.S. at 533 (footnote omitted).

Of course, the applicability of this rule of construction is valid only on the premise that Congress was fully aware of the construction in question. In this instance, there can be no doubt concerning Congress' awareness of the Supreme Court decisions construing Section 5, for the relevant hearings and committee reports demonstrate a full examination of the Supreme Court's Voting Rights Act decisions. Indeed, the absence of any amendment to Section 5 is especially compelling evidence that no change was intended therein in light of the fact that one of the major changes in law wrought by the 1982 Amendments was the revision of Section 2 to reflect Congressional disapproval of the Supreme Court's construction of Section 2 in *City of Mobile*.[3]

Accordingly, Mississippi contends that the United States Attorney General may not use Section 2 standards in Section 5 proceedings.

CONCLUSION

For the above and foregoing reasons, the Attorney General of the State of Mississippi respectfully requests that

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[3] The same conclusion is compelled by another principle of statutory construction, which recently was reaffirmed by the Supreme Court. It is that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*, 108 S. Ct. 1392 (1988). *See also NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 499-501 (1979). The incorporation of the Section 2 "results" test into Section 5 raises serious constitutional problems. Under its present construction, Section 5 operates as an unparalleled but nonetheless limited restraint on voting changes in covered jurisdictions. The special treatment of covered jurisdictions under Section 5 is justified because of the specific and unique evil to which this remedy is directed. It was designed to prevent jurisdictions which discriminated from diminishing the position of racial minorities, not to coerce covered jurisdictions into changing their laws.

the Attorney General of the United States reconsider his objection to the repeal of Section 37-7-611, Mississippi Code of 1972, and that Section 47 of Chapter 492, 1986 Laws of 1986 be given preclearance in accordance with 42 U.S.C. § 1973c.

This the 12th day of January, 1990.

Respectfully submitted,

Mike Moore, Attorney General
State of Mississippi

Stephen J. Kirchmayr
Deputy Attorney General

By: /s/ Giles W. Bryant
Giles W. Bryant
Deputy Attorney General

Office of Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

APPENDIX N

[SEAL]

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 25 1990

Honorable Mike Moore
Attorney General
State of Mississippi
P.O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to your January 16, 1990, request for reconsideration of the March 31, 1989, objection interposed pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Section 47 of the Uniform School Law of 1986, Chapter 492, insofar as it repeals Section 37-7-611 of the Mississippi Code. As you are aware, Section 611 deals with the modification of municipal school district boundaries in Mississippi when the district's parent city annexes territory outside the school district, and generally provides that any such annexation will prompt a similar annexation by the municipal school district. Your request was supplemented on February 27, March 2, and March 13, 1990.

This also refers to your related submission under Section 5 of the Voting Rights Act of Chapter 379, H.B. No. 1159 (1977), which partially repealed the provisions of Section 611 by providing that they do not apply when a municipal school district's parent city adopts an annexation that

crosses county lines. We received your submission on March 26, 1990.

We have carefully considered the information you have provided, data from the 1970 and 1980 Censuses, and information and comments received from other interested parties. For the following reasons, it appears that the concerns set forth in the March 31, 1989, objection letter continue to weigh heavily in our review of the repeal of Section 611, and it also appears that these concerns apply with equal force to the 1977 partial repeal of the boundary extension provisions of Section 611.

At the outset, we note that the state makes several claims about the preclearance status of the instant changes which appear to seriously misconstrue the structure, purpose, and history of the preclearance requirement. The state contends that the repeal of Section 611 is not properly before the Attorney General for review because the repeal allegedly was precleared by operation of law when the state in 1986 submitted other portions of the Uniform School Law and no objection then was interposed to that submission within the 60-day review period. The state also contends that a 1978 amendment which clarified the scope of the instant 1977 change was precleared when the state in 1981 received preclearance for a separate portion of the 1978 statute.

It is well-established that to trigger Section 5 review a covered jurisdiction must submit a voting change to the Attorney General in an "unambiguous and recordable manner." *Allen* v. *State Board of Elections*, 393 U.S. 544, 571 (1969). *Accord, McCain* v. *Lybrand*, 465 U.S. 236 (1984); Procedures for the Administration of Section 5 (28 C.F.R. 51.26(d), 51.27). Both the prior submission of the Uniform School Law and the prior submission of the 1978 act identified specific voting changes adopted by those statutes, but neither submission contained any reference to the voting changes which the state now claims were precleared.

Section 5, as interpreted by the courts and our submission guidelines, plainly fixes the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing in both instances that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made. Accordingly, neither claim has any merit.

The principal factual argument advanced here by the state is that the changes in the procedure for extending municipal school district boundaries do not have any racial aspect but rather simply reflect an ongoing contest among school districts for students and tax base. In that regard, the state asks that we compare the 1970 and 1980 Census data for cities with municipal school districts to understand the current demographic trends in the state, and also points to some school district financial data from the 1984-1985 school year. In addition, the state claims that the question whether a municipal school district's boundaries should be extended is not relevant to whether the parent city should be allowed to adopt its proposed annexation, and thus the state's uncoupling of the two issues reflects a rational, nonracial decision.

However, our review of the census data and of specific recent annexation disputes in the state confirms our prior judgment that the repeal of Section 611 will essentially freeze municipal school districts in their present boundaries which, in many instances, apparently will yield municipal districts with increasingly higher black population percentages and neighboring school districts that are increasingly white. Among the school districts that would appear to be so affected is the Hattiesburg school district, where the issue of whether suburban whites will be annexed into the more heavily black municipal school district appears to have been the linchpin for the adoption of the 1977 change. Overall, while we continue to recognize that demographic patterns are not uniform throughout the state

and that some school district annexation disputes may only reflect the concerns noted by the state, there appear to be significant racial considerations involved in the instant changes which are generally understood among state political leaders and educators.

It also continues to appear that by repealing the boundary extension provisions of Section 611, the state would abandon the judicial, case-by-case approach to reviewing municipal annexations as they relate to school district boundaries, a process which the state supreme court recently confirmed fully allows for the consideration of any school district dispute involving legitimate educational concerns. *Harrison County* v. *City of Gulfport*, 557 So.2d 780 (Miss. S.Ct. 1990). We have received no nonracial explanation for reversing this longstanding practice.

Lastly, the state avers that the changes at issue relate to the administration of schools and do not deny or abridge the right to vote. Our analysis, however, indicates that the submitted changes involve the revision of political boundary lines based on race which, as indicated in our objection letter, is not permitted under Section 5. *Perkins* v. *Matthews*, 400 U.S. 379 (1971). Furthermore, as explained in that letter, the changes appear to establish a system for choosing municipal school district trustees that impacts negatively on the influence of minority city school district residents.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia* v. *United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in these instances. Accordingly, on behalf of the Attorney General, I must decline to withdraw

the objection to the repeal of Section 37-7-611 and must object to the change occasioned by Chapter 379 (1977).

As we advised in the March 31, 1989, objection letter, you have the right under Section 5 to seek a declaratory judgment from the United States District Court for the District of Columbia that the submitted changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. However, until these objections are withdrawn or a judgment from the District of Columbia Court is obtained, the repeal of Section 37-7-611 and the change occasioned by Chapter 379 (1977) continue to be legally unenforceable. Similarly, the unprecleared 1978 amendment to the 1977 change (adopted in Chapter 312 (1978)) is legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to these matters. If you have any questions, please feel free to call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

/s/ John R. Dunne

John R. Dunne
Assistant Attorney General
Civil Rights Division

APPENDIX O

42 U.S.C. § 1973c

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or

procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

APPENDIX P

28 C.F.R. § 51.25 (1986)

§ 51.25 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

(b) If the change affecting voting is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(c) The name, title, address, and telephone number of the person making the submission.

(d) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(e) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(f) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(g) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(h) The date of adoption of the change affecting voting.

(i) The date on which the change is to take effect.

(j) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(k) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(l) A statement of the reasons for the change.

(m) A statement of the anticipated effect of the change on members of racial or language minority groups.

(n) A statement identifying any past or pending litigation concerning the change or related voting practices.

(o) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(p) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.26 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.35.

APPENDIX Q

28 C.F.R. § 51.35 (1986)

§ 51.35 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.25, the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission and no later than the 60th day following its receipt.

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority, and the 60-day period will commence upon the date of such notification.

(d) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.30.

Supreme Court, U.S.
FILED
JUN 28 1991
OFFICE OF THE CLERK

(2)

No. 90-1861

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

GREENVILLE PUBLIC SCHOOL DISTRICT, *et al.*,

Petitioners,

versus

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

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BRIEF FOR RESPONDENTS IN OPPOSITION

J. Robertshaw
ROBERTSHAW, TERNEY & NOBLE
128 South Poplar Street
P. O. Box 1498
Greenville, MS 38702-1498
(601) 378-2171
Counsel of Record for Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTIONS PRESENTED

I Whether the law applicable to the facts of this case was not settled by *Morris v. Gressette,* 432 US 491 (1977)?

II Whether Petitioners are not actually seeking on certiorari a review of a question of fact, decided adversely to their contention in *Greenville Public School District v. Western Line Consolidated School District* (Appendix A), and in Dupree v. Mabus (a three-judge court; Appendix R), both courts considering the same evidence.

III Whether, assuming the statute in question [§ 47, Ch. 492, Miss. Laws of 1986, the "Uniform School Law"] was *not* precleared, should not Petitioners' remedy be the traditional constitutional action to enjoin enforcement of of the *voting* practices or procedures complained of?[1]

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[1] As will be fully developed, Petitioners could not care less about the amorphous effect on voting. In fact, the Petition is filed by the *school* district and by the individuals *in their official capacities as district trustees.* They seek the *tax base* on real and personal property annexed. Very few school districts vote.

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BRIEF FOR RESPONDENTS IN OPPOSITION

PERCEIVED MISSTATEMENTS OF FACT

A. The description of Western Line School District in n.1, Petitioners' Brief, is inaccurate and misleading.

The statement challenged is "Western Line is essentially a *suburban school district*." [Emphasis added] Our objection is not nit-picking, as suburban districts appear to

be given different consideration in the cases. Also, the demography of the school district is relevant to questions of voting, which is supposedly what this case is all about.

In fact, Western Line is approximately 40 miles north and south, extending from the north boundary of Washington county southward into Issaquena County. It is bounded on the west by the Mississippi River and by the boundaries of Greenville Public School District ("GPSD"), completely surrounding the latter. Its width varies from one mile (at the easterly projection of GPSD) to about 15 miles, depending on the meandering of the river. It contains approximately 442 square miles in Washington County, plus approximately 48 square miles in Issaquena county.[1]

The map, Appendix A to *Arkansas v. Mississippi*, 415 U. S. 289 (1974), includes that part of Western Line's area affected by annexation, but does not fairly show its total area, or the general character of the District. By subtracting the former acreage of Greenville from the total acreage after annexation and deducting 5500 acres of GPSD "added territory", we obtain 3,761 acres of Western Line (out of 590 square miles). This is about 1.2% of Western Line's total area[2]

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[1] See: *City of Greenville v. Farmers, Inc.*, 513 So2d 932, 939 (Miss. 1987). The Court uses 300 square miles as Western Line's area; we don't know where this number was obtained, but the difference is not material. Both numbers illustrate our point.

[2] We are reminded of a Greenville resident charged with fraudulently selling "rabbit burgers" during the Great Flood of 1927. When pressed, he admitted they were only "50% rabbit." Asked what this

(continued...)

Western Line is a *predominantly rural school district.* This is illustrated by the fact the proposed annexation affected only about 1% of its territory, but approximately 15%[3] of student enrollment, and approximately 55% of its ad valorem tax base. *Farmers, Inc., supra,* n.1.

B. The Supreme Court of Mississippi did not "approve[d] the annexation in 1987" in *Farmers, Inc, supra, n.1.*

Western Line Consol. School Dist. v. City of Greenville, 465 So.2d 1057 (Miss. 1987), reversed and remanded the case, directing the Chancellor to

> balance the equities of the parties by weighing all relevant factors to determine if the city's claim of need is defeated by inequitable consequences to those in the annexation area. . . [465 So.2d at 1060.]

He did just that; he denied the whole annexation after making specific findings related to Western Lines' objections to annexing the Mississippi Power & Light Company generating plant and the Comet Delta, Inc., facility,[4] objections of Farmers, Inc., and certain objector-farmers.

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[2](...continued)
meant, he replied, "One rabbit, one mule." Some "suburban" school district!

[3] Following annexation, more that 20% of enrollment.

[4] A 26.6 million dollar rice milling, processing, and storage facility.

Farmers, Inc., supra, again remanded the case with directions to exclude the above facilities and property, and to draw boundaries of the remainder of the proposed annexation, thus assuring an adequate tax base and financial viability for Western Line.[5]

SUPPLEMENTAL STATEMENT OF THE FACTS

Some background is needed in order to grasp the true issues here. One would think that since this action is brought under § 5 (the *Voting Rights* Act of 1965) that it petitioners were concerned over the denial or abridgement of the *right to vote.* Nothing could be farther from the truth. Petitioners do not give a tinker's damn about voting rights; they are after *tax revenues.*

Prior to 1954, there were more school districts in Mississippi than a hound dog has fleas. For example, in the area now comprising Western Line and GPSD, there was the Greenville school district (which accepted all white pupils from north to the county line and for some 8 to 10 miles to the south (boundaries were informal and elastic), the Avon school district, the Riverside district, the Chatham district and the Glen Allan district. Superimposed on these districts were separate districts for the blacks: the Black Bayou Colored district, the Riverside Colored district, the Glen Allan Colored district, and so on. Virtually every school was a separate district.

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[5] Since objectors prevailed in *Farmers, Inc., supra,* there was no controversy over the Final Decree entered December 9, 1987, and the record does not identify the Western Line acreage or tax base finally included within the new corporate boundaries.

During 1953 and 1954, Mississippi enacted the Minimum Foundation Program. Basically, control was centered in the State Department of Education; the primary source of revenues came from state taxes, distributed on a "teacher unit" basis (in effect, *per capita*); districts were re-constituted under supervision of the State Educational Finance Commission (now abolished, its functions being taken over by the State Board of Education, herein the "EFC"), winding up, as I recall, with 151 school districts, statewide.

These districts were re-constituted with emphasis on viability, economic operation, and the capability of offering a varied curriculum designed to meet the needs of modern society. A district, like a three-legged stool, had to have: (1) sufficient students to support a curriculum meeting accreditation standards; (2) an adequate teaching and administrative staff; and, (3) a tax base sufficient to support the first two.[6] The system must have worked, because today we have only 153 districts, nearly 40 years later.

This background was known to the courts and counsel below; we add it here on the theory this Court should have the same information in considering issues in this case.

The mission of a school district is to educate pupils;

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[6] The primary source of income was from the state. The only other source of income for districts for "district maintenance funds" used for enrichment (teacher salaries, local programs, etc) or for debt service, was from ad valorem taxes on real and personal property. We do not consider federal funds usually earmarked for specific purposes.

the mission of a municipality is to govern its residents and furnish municipal services such as police and fire protection, streets, drainage, sewerage, sanitation, and the like, and these take tax revenues.[7] Expansion by way of annexations is triggered by this need for tax revenues, and the municipal school district came along piggy-back, so to speak, because of § 37-7-611 and the automatic (often arbitrary) addition of any annexed territory to the school district.

During this period, § 37-7-611, Mississippi Code of 1972, was an anomaly. It was arbitrary and the only method of changing district boundaries not subject to control by the EFC. Back in the "olden days", when a municipality only annexed what it needed, the arbitrary effect of § 37-7-611 did not constitute a problem. With the rising cost of government exceeding inflationary increases in assessed valuation, cities began to annex territory in large gulps. This resulted in a rash of cases where school districts were forced to oppose annexation, literally fighting for their economic lives. Examples: *Western Line Consolidated School District v. City of Greenville,* 465 So2d 1057 (Miss. 1985) (the city sought to go from 11.6 square miles to 30.4); *Prentiss County Annexation Committee v. Booneville,* 551 So2d 890 (Miss. 1989) (from 6.9 square miles to 24.9); and *Harrison County v. Gulfport,* 557 So2d 780 (Miss. 1990) (from 29.36 square miles to 83.01).

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[7] See: *Bassett v. Town of Taylorsville,* 542 So2d 918 (Miss. 1989). The point is that criteria supporting municipal expansion differ widely from, and have no reasonable relationship to, those relevant to the constitution of school districts.

The legislative purpose of the Uniform School Law in enacting § 47 repealing § 37-7-611 was to protect the tax bases of county districts in the path of municipal expansions.[8] See: Appendix M, 145a.

PRELIMINARY ANALYSIS

Since petitioners have identified no conflicts between opinions of United States courts of appeals, or any conflict of the opinion by the Mississippi Supreme Court, a state court of last resort, with that of a United States court of appeals,[9] we are left with the following criterion for a writ of certiorari stated in Rule 10.1, Supreme Court Rules:

> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with

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[8] Since school taxes were determined by the school trustees and levied separately by the city/county under §37-57-105, there would be no reason why the city and county school district might not co-exist. This preserved the student enrollment and the financial integrity of the "target" school without interference with the need of the city for additional tax revenues. If it became necessary or desirable to adjust school boundaries, the mechanism was there in § 37-7-103 (specifically precleared as § 52 of the Act).

[9] Because § 5 contains the right to a direct appeal to this Court, we would not expect to find circuit court decisions construing the Voting Rights Act; petitioners point to no three-judge court decisions conflicting with the case below which, in fact cites and relies upon three-judge court decisions and, in turn, is cited and followed by *Dupree, infra*, a three-judge court.

applicable decisions of this Court.

We think *Morris v. Gressette,* 432 US 491 (1977), settled the question of *law* relied upon by the court below; *i.e.,* that compliance with the preclearance procedure is measured *solely* by the absence, for whatever reason, of a timely objection by the Attorney General of the United States ("USAG"), leaving only a question of fact as to whether submission of the Uniform School Law[10] for preclearance was "complete". We believe this Court has enough to say grace over as it is, without undertaking to review issues of *fact* on certiorari.

Petitioners are curiously silent in their petition about what they *really* seek to accomplish in this litigation, stated in their Amended Complaint. The relevant part of the declaratory judgment sought, as stated in the Amended Complaint, is:

> a. The repeal of Section 37-7-611 of the Mississippi Code of 1972 by Section 47 of the Uniform School Law *is void and of no effect* until it has been precleared by the Attorney General of the United States. [Emphasis added.]

The only remedy under § 5 is

> . . . unless and until the [District of Columbia district] court enters such [declaratory] judgment *no person shall be denied the right to vote* for failure to comply with such qualification,

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[10] Chapter 492, Mississippi Laws of 1986.

> prerequisite, standard, practice or procedure . . . [Appendix O, p. 178a. Emphasis added.]

Congress did not, never intended to, and could not give the USAG veto power over substantive legislation of a State, unrelated to voting. Forbidding implementation of what may or may not be valid, nondiscriminatory State legislation is a most serious matter. We note § 5 requires a three-judge court, *plus* a direct appeal to this Court, both of which are unusual, to say the least. Providing an expeditious administrative preclearance as an alternative to a time-consuming declaratory judgment is really meaningless *unless* the State could proceed with its business with some degree of certainty it had complied with § 5.

REASONS WHY CERTIORARI SHOULD BE DENIED

A. In *Gressette, supra,* this Court settled the law that the USAG automatically precleared state legislation submitted under § 5 by his failure, for whatever reason, to make a timely, specific objection.

This Court in *Morris v. Gressette,* 432 U.S. 491 (1977), squarely held that where a State legislative act has been completely submitted to the USAG for preclearance, and the USAG fails to make a specific objection to the disputed section within the 60-day period allotted---for whatever reason---he may not later interpose an objection.

In *Gressette,* a South Carolina statute was submitted to the USAG for preclearance under § 5[11] on May 12 1972. On May 23, the United States district court found

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[11] 42 USC § 1973c, referred to herein as "§ 5".

the statute constitutional, and on June 30, the USAG notified South Carolina he would interpose no objection, but would defer to the district court's determination. Thereafter, another suit was brought in the district court for the District of Columbia challenging the USAG's failure to object.

On May 16, the DC court directed the USAG to make a reasoned determination of the statute's constitutionality, and in response he stated that in his view, it was unconstitutional but refused to interpose an objection in deference to the South Carolina district court's determination. On July 19, 1973, the DC court directed the USAG to make a determination without regard to the South Carolina court's decision, and the following day, the USAG interposed an objection.

By our count, the USAG's objection was interposed 434 days after the original submission.

Gressette held: (1) from the nature of § 5 and its potential severity, Congress did not intend that the USAG's actions be subject to judicial review and that compliance with § 5 by following the preclearance procedure is measured *solely* by the *absence* for whatever reason of a timely objection by the USAG; (2) Congress intended to provide covered jurisdictions with an *expeditious* alternative to the declaratory judgment action by providing submission to the USAG as an alternative, and since judicial review of his actions would unavoidably extend the period specified in the statute, it is necessarily precluded; and, (3) where the discriminatory character of an enactment is not detected upon review by the USAG, it can be challenged in traditional constitutional litigation,

but it cannot be questioned in judicial review of (a) the USAG's exercise of his discretion under § 5, *or* (b) his failure to object within the statutory period.

The effect of § 5 is that a "covered jurisdiction"[12] may not "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968," unless or until *either* (1) a declaratory judgment has been entered by the district court for the District of Columbia to the effect that the enactment "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, . . .", *or* (2) it has been submitted by the chief legal officer to the USAG and the USAG has not interposed an objection within sixty days after such submission or has affirmatively indicated such objection will not be made. Neither an affirmative indication he will not object, nor the USAG's failure to object, nor such a declaratory judgment shall bar a subsequent action to enjoin enforcement. Appendix O, pp. 178-9a.

Gressette points out that this Court has described the nature of the § 5 remedy as "unusual" and "severe" [432 US at 501]; In *McCain v. Lybrand,* 465 US 236, 244 (1984), this Court commented,

> The "preclearance" requirement mandated by § 5 of the Act is perhaps the most stringent of these remedies, and certainly the most extraordinary.

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[12] Mississippi is a covered jurisdiction.

As originally drafted, all such voting changes had to be approved by the District Court for the District of Columbia, and

> [J]ustified concerns arose that the time required to pursue such litigation would unduly delay the implementation of validly enacted, nondiscriminatory state legislation. Cognizant of the problem, Attorney General Katzenbach suggested that the declaratory judgment procedure "could be improved by applying it only to those laws which the Attorney General takes exception to within a given period of time" Senate Hearings 237. The legislation was changed to incorporate this suggestion.
>
> In the light of the potential severity of the § 5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an *expeditious* alternative to declaratory judgment actions.

432 US at 504. Emphasis added.

B. The Uniform School Law as submitted satisfies *Gressette's* requirement the submission must be "complete".

The Uniform School Law was approved April 15, 1986, with an effective date of July 1, 1987. It was submitted to the USAG for preclearance under § 5 on July 22, 1986. As the title implies, the purpose was to "pro-

vide that all public school districts in the state of Mississippi shall have a common system of administration." [Appendix A, p. 3a][13]

As pointed out by the Mississippi Supreme Court,

> *The submission included the act in its entirety; a copy of the roll call voters of both houses; and a looseleaf booklet*[14] *entitled "Senate Bill No. 2117---Comparison of Current Law and New Law" which set forth each section of the then current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes.* The submission states in part, "[f]or the sake of brevity, the submission will only set forth the particular sections which deal primarily with the voting rights even though *the complete act is submitted for review.*". (emphasis added). The submission then lists specific provisions of the Act among them Section 52, amending Miss. Code Ann. § 37-7-103, and Section 57 amending § 37-7-113. [Appendix A, p. 9a; emphasis is in the original.]

We believe the Mississippi Attorney General ("MAG") specifically brought to the attention of the USAG only those sections of the Uniform School Law

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[13] *Cf.* §37-6-3(1), Mississippi Code of 1972.

[14] My secretary counts 467 pages.

which he *perceived* as affecting voting.[15] § 47 repealed all sections of the current law giving different treatment to municipal separate school districts, including the bone of contention here, § 37-7-611, Mississippi Code of 1972.

C. Whether the MAG fairly and squarely "submitted" § 47 of the Uniform School Law to the USAG for

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[15] To be candid, neither do we perceive § 47 of the Uniform School Law as affecting voting. Residents of Western Line will continue to vote for district Trustees who control the education of their children and determine the annual millage levy for school purposes. They have a direct interest in these elections, and have a right to vote for them. Similarly, we have no quarrel with the fact Western Line residents will be able to vote for councilmen who appoint Trustees of GPSD. These councilmen are responsible for the operation of the City and for levying city taxes and furnishing all municipal services (police and fire protection, streets, drainage, sewerage, etc.) in which these residents, as a class, have a direct interest. The flip side of that question is that these residents, as a class, cannot constitutionally be *excluded* from voting for these councilmen. We agree with the MAG's conclusion,

> The repeal of Section 37-7-611 was based on the legislative finding that public educational opportunities available to students residing in rural areas of Mississippi were substandard to those offered to students residing in urban areas. The purpose underlying the repeal of Section 37-7-611 was to protect the ad valorem tax base available to county school systems in the path of municipal expansions. The repeal of Section 37-7-611 was an educational decision totally unrelated to voting rights considerations, . . . [Appendix M, 145a]

To give this Court some idea of the nature of cases brought under § 5 under the guise of *voting*, *Nickles v. Western Line Consol. School Dist.*, No. GC90-45-B-O (ND MS, filed February 22, 1990), cited in Petition, p. 7, n.7, was brought by Mrs. Janice Nickles, a *white* resident of Western Line, and her two minor school children. Mrs. Nickles *was not even registered to vote;* her children are not old enough.

preclearance is a question of fact, not law, and not reviewable on certiorari.

We shall not belabor this point other than to cite Rule 10.1, Supreme Court Rules, and to point out that petitioners have already had two bites at this cherry. The court below called for an *amicus curiae* brief from the MAG, which was prepared by Giles W. Bryant, Esq., a Special Assistant Attorney General. By agreement of counsel, Mr. Bryant furnished the Mississippi Supreme Court the same documents relating to the submission as he furnished a three-judge court in *Dupree v. Mabus,* Appendix R, p. 1b.[16] *Dupree* is a "white horse" case, on all fours as to law and the facts. Perry Sansing, Esq., representing the petitioners here, represented the plaintiffs in *Dupree, supra.* The issue was the same in both cases: had § 47 of the Uniform School Law been precleared by the USAG? Neither the Supreme Court of Mississippi nor the three-judge court in the Southern District bought petitioners' argument that the repeal of § 47 was somehow hidden from the USAG and thus "not submitted". Of course, *had* it been hidden, or if the USAG simply overlooked or did not detect this repeal of S 37-7-611, petitioners' remedy is provided by § 5, itself:

> Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object,

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[16] A direct appeal to this Court under § 5 has been perfected by filing a timely Notice of Appeal. Although judgment was entered April 2, 1991, this case has not yet been officially reported, and on inquiry there is some doubt it will be submitted for publication. Because of its importance here, we have elected to reproduce the opinion in appendix form.

> nor a declaratory entered under this section shall bar a subsequent action *to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure . . .*[17] [Emphasis added.]

It might be useful to point out that *two* separate courts, considering the same issue [whether § 47 had been precleared], on the same facts [surrounding the original 1986 submission to the USAG], have reached the same result, each holding that *as a matter of law on undisputed facts* there had been a "complete" submission of § 47.

D. This case is a perfect example of what happens when the USAG, on a § 5 review, goes beyond the impact of State legislation on *voting*.

In the USAG letter of March 31, 1989, interposing an objection to repeal of § 37-7-611 (*983 days* after its original submission), he gives the following as one reason:

> While we recognize that demographic patterns are not uniform throughout the state, demographic data available to us *suggest that the repeal of Section 37-7-611* <u>*will have a significant racial impact.*</u> According to information published by the State Department of Education, approximately half the municipal school districts in the State of Mississippi have a student population that is majority black and

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[17] We believe petitioners have scant interest in enjoining annexed Western Line residents from voting for city councilmen. Petitioners want Western Line's students and a bite out of its tax base; Western Line doesn't want to surrender either. That's this lawsuit in a nutshell.

> about two-thirds are 40 percent black or higher. Thus, with the repeal of Section 37-7-611, *the long term effect appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner.* [Appendix L, pp.140a-41a. Emphasis added.]

Respectfully, what in the name of this ever-living, blue-eyed world does this have to do with *voting*? If the result intended by the USAG, and sought by petitioners, were limited to voting by this "class of city voters", no life or death problem would ensue, since the § 5 remedy would be a simple ban on implementation of the *voting change,* but not on leaving school boundaries in place. *Cf.: Dotson v. City of Indianola,* 514 FSupp 397 (ND MS, 1981). Preclearance of the *annexation* was under consideration contemporaneously with the squabble over § 47, and the USAG's objections were not withdrawn until February 11, 1990. [Appendix A, p. 4a-5a.] Since the problem is stated as creating a new class of *city* voters, should not this have been logically considered in the annexation preclearance, rather than in the consideration of the Uniform School Law?

Let's look at this.

Taking advantage of the ambiguity in the USAG's preclearance of the Uniform School Law, seemingly limited to "the voting changes occasioned by Senate Bill No. 2117 *as identified in your July 22, 1986, letter"* [Appendix

H, p., 112a. Emphasis added.], petitioners commenced this action seeking school taxes levied by Western Line on property in the annexed area. In addition, they had given the county tax collector a letter, noticing her that GPSD claimed such taxes, which had the effect of cutting off Western Line's cash flow. What was the situation?

The Western Line territory affected consists of 3761 acres contiguous to the old Greenville city limits and to the boundaries of the former Greenville Municipal Separate School District. Using data in *Farmer's, Inc., supra,* GPSD would take 300 of 2030 Western Line students, and $39.9 (about 55%) of Western Line's $73+ millions tax base, but only about 1% of its territory. In addition, Western Line would lose 11 teacher units with $212,000 in state minimum foundation program support.[18]

§ 37-9-105, Mississippi Code of 1972, required school districts to notify a teacher by April 8th of each year if he/she were not to be tendered a contract for the ensuing school year. Failure to give this notice meant the teacher's contract was *automatically* renewed. *Robinson v. Board of Trustees,* 477 So2d 1352 (Miss., 1985). Because of the uncertainty created by petitioners' action, Western Line did not know, and could not predict: (1) whether it would have 2030 or 1730 pupils to educate for the following school year; (2) whether there would be tax revenues available during the following school year for the education of these 300 students, or for the salaries of these 11 teachers; or, (3) if the required notice of non-reemployment were given the teachers, whether they would be lost

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[18] It takes no stretch of the imagination to visualize what this would do to Western Line's viability as an educational entity.

for good or available for employment if needed.

Moreover, this uncertainty extended to the students and their parents as to where they would attend school the following year, as well as to the administrative and structural staffs. One might well comment, "that's a helluva way to run a railroad."

On these facts, Circuit Judge Clark granted a "moratorium"[19] for the fiscal year 1988-89, and petitioners appealed.

E. There is a lot to be said for *certainty* following a preclearance of State legislation by the USAG.

We believe the language of § 5 as well as its legislative history [see pp. 11-12, *supra*] buttress the conclusion it provided what *Gressette* refers to as an "expeditious alternative to declaratory judgment actions"[432 US at 504], and it was intended that a State might go about its business implementing legislation, once precleared. With the premise State legislation has been fairly and squarely submitted to the USAG, we are reminded of language most of us may be familiar with,

> If any man can show just cause, why they may not be lawfully joined together, let him now speak, or else hereafter for ever hold his peace. [*The Book of Common Prayer* (1928 Ed.), p. 300]

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[19] Continued by the Supreme Court of Mississippi during pendency of the appeal by an interim order entered March 29, 1989.

What has happened in this case is sufficient justification for the proposition. Because of the ambiguity arising out of the USAG's weasel words, "as identified in your letter of July 22, 1986," it is not beyond the realm of possibility some enterprising lawyer may come up with yet another provision of the Uniform School Law perceived to affect voting, *five years* after the original submission.

REBUTTAL

With deference, we believe further argument on whether the original submission of the Uniform School Law for § 5 preclearance by the USAG was "complete" within the meaning of the *Gressette* holding would be redundant. Suffice it to say that *on the same facts,* the eight-judge Supreme Court of Mississippi and the three-judge *Dupree* court have unanimously found as a matter of law that the submission was complete. Should argument be considered necessary, we will be content to incorporate the *Dupree* opinion by reference [Appendix R].

Nowhere in this action is there any claim that any petitioner's right to vote has been abridged or denied on account of race or color, nor does any petitioner claim he/she has been "denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure [contained in the Uniform School Law]". We note the parties are "named in their *official* capacities" [Petition, ii]; a school trustee does not vote in his/her "official capacity".

In all cases cited above spawned by claims § 37-7-611 has not been precleared, we defy petitioners to identify a *single one of them* based upon any alleged denial or

impairment the right to vote on account of race or color.[20] Every one of them, without exception, is an attempt to take students and/or ad valorem tax base from the adjoining school district, without regard for the consequences. On pages 16-19, above, the consequences or potential consequences of an action such as this are described in detail. *None* is related to voting.

Petitioners rely heavily on *McCain v. Lybrand, supra,* the opening paragraph of which is quoted:

> In 1966, South Carolina enacted a statute that altered Edgefield County's election practices but the statute was not submitted to federal officials for their approval as required by the Voting Rights Act of 1965. In 1971, the statute was amended, modifying the 1966 election practices, and state officials submitted the amendment to the Attorney General for his approval. In response to a request from the Attorney General, state officials provided him with additional documentation in support of their submission, including the 1966 statute. The Attorney General approved the submission, stating that he did not object to the change in question. *The question in this case is whet-*

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[20] We in Western Line actively resent baseless charges of discrimination based on race or color. When the *Singleton*-type desegregation decree was entered against it in January of 1970, Western Line was determined to desegregate and *make it work.* It did so. *Farmers, Inc., supra,* at 939. GPSD did not. We would venture to make the general statement there is less racial discrimination today in Mississippi as a whole and Western Line in particular than there is, say, in the District of Columbia.

> *her the Attorney General's approval of the 1971 submission can be deemed to have the effect of ratifying the changes embodied in the 1966 enactment. We hold that the 1966 changes have not been approved.* 465 US at 238-39. Emphasis added.

In the case at bar, the facts are completely different. Here, petitioners cannot dispute the fact the Uniform School Law was submitted for preclearance in its entirety. The question before this Court is whether the USAG's failure to object to § 47 constituted preclearance under § 5. Consequently, *McCain* may not be used as authority one way or another on the precise issue decided by the court below; i.e., did the AGUS preclear § 47 by his failure to *then* object?

We expect petitioners to make the same arguments in reliance on the recent case[21] of *Clark v. Roemer,* --- US ---, 1991 WL 89713 (USSC, June 3, 1991), and we think it distinguishable on the facts. *Clark* involved the holding of elections for judgeships. As to some, the three-judge court found the USAG had interposed valid objections when submitted for preclearance ("Group I"); as to others, historically some of the earlier judgeships had never been submitted for preclearance, but most of the later ones had ("Group II"). As to both groups, Louisiana had filed for judicial preclearance by the District of Columbia district court. The three-judge court refused to enjoin the elections for these judgeships, but did enjoin the winners from taking office pending judicial preclearance. This Court held it error not to enjoin the Group I

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[21] Decided June 3, 1991, the same day this petition was filed.

elections in the face of the plain § 5 mandate. As to the Group II seats, the three-judge court had reasoned it was not the amendments, but the whole legislative act covering all of the judgeships which was submitted for preclearance, and that when the USAG approved the new act, "he not only approves the amended portion but necessarily approves the older, reenacted part, which forms part of the new act." [1991 WL 89713, *7 (US)] *Clark* held this governed by *McCain, supra,* and that the injunction should have issued.

Clark raises the question of identifying the voting changes submitted for preclearance, This was done in the context of Group II cases where the question was preclearance "of what?" Specifically, was the USAG being asked to preclear only the amendments adding new judgeships, or both the amendments and the original legislative act being amended, which included some unprecleared judgeships. In this context, we would think good faith would require Louisiana identify *both* the old act and the new additions in submitting it for preclearance, particularly if Louisiana intended to submit the old with the new. We use the words, "good faith", advisedly, because we believe a submitting jurisdiction is under a duty to present the matter fairly and squarely. *McCain, supra,* 465 US at 247. Then, too, we believe "sandbagging", and "trial by ambush" have no place in the practice of law.

Clark, purely and simply, is a variation on the *McCain* theme. . .nothing more.

We are convinced *neither* the MAG *nor* the USAG had any idea the repeal of § 37-7-611 affected voting rights, pointing out that the former had singled and dis-

cussed what he *thought* were all the "particular sections which deal primarily with voting rights". Appendix E, p. 35a.

What of this "preclearance by implication"? First, applying the *Gressette* rule, we need not reach this question. We suggest this "implied preclearance" is a matter of semantics. The Court below simply demonstrated that the specific preclearances of § 52 and § 57 is entirely inconsistent with the objections raised to § 47, ***1,403** days after the original submission.* This is entirely inconsistent with Congressional intent that the administrative procedure be an "expeditious alternative" to an action for declaratory judgment. Of course, if preclearance by the USAG can be re-opened or collaterally attacked three to four years after the initial preclearance, *no State can safely implement legislation precleared by this "expeditious alternative".*

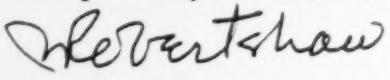
CONCLUSION

Backing off for a proper perspective, it is apparent the confusion arose as to whether § 37-7-611 had been repealed arose *because* the USAG *neither precleared nor objected to* § 47 of the Uniform School Law. Under *Gressette*, this constitutes preclearance. When State legislation is properly submitted to the USAG for preclearance, the time has come; "let him now speak, or else hereafter for ever hold his peace."

Preclearance can never constitute an "expeditious alternative to the declaratory judgment action" under § 5 unless and until the State can rely upon the preclearance by the USAG as full compliance with § 5.

The petition for certiorari should be denied.

Respectfully submitted,



J. Robertshaw
(Counsel of Record)
ROBERTSHAW TERNEY & NOBLE
128 South Poplar Street
P. O. Box 1498
Greenville, MS 38702-1498
(601) 378-2171

CERTIFICATE

I certify that I have this date forwarded the foregoing Brief in Opposition via Federal Express, charges prepaid, to the Press of Byron S. Adams, Washington, D. C., for printing, binding and filing with the Clerk of this Court not later than July 5, 1991, with further directions to serve three copies, each, upon counsel for Petitioners at the addresses stated below, and to file its affidavit of such service with this Court:

HOLMES S. ADAMS, Esq.
PERRY SANSING, Esq.
(Counsel of Record)
BRUNINI, GRANTHAM,
GROWER & HEWES
1400 Trustmark Building
P. O. Box 119
Jackson, MS 39205

CLELL G. WARD, Esq.
McLEMORE & WARD
525 North Broadway
P. O. Box 75
Greenville, MS 38702

Dated: June 25, 1991.

J. Robertshaw
Counsel of record for Respondents

APPENDIX

APPENDIX R

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JOHNNY DUPREE, ET AL,

Plaintiffs,

versus

RAY MABUS, Governor of Mississippi, ET AL,

Defendants,

THE LAMAR COUNTY BOARD OF EDUCATION and TRUSTEES, in their official capacities and FORREST COUNTY SCHOOL DISTRICT and the Members of the BOARD OF TRUSTEES in their official capacities,

Defendants/Intervenors.

Civil Action No. H90-0043(W)

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
APR 02 1991
J. T. NOBLIN, CLERK
BY _____ DEPUTY

MEMORANDUM OPINION AND ORDER

Pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284,

this action under § 5 of the Voting Rights Act of 1965 is before this three-judge Court on motions for summary judgment pursuant to Fed.R.Civ.P. 56 by (1) the plaintiffs, members of the Board of Trustees of the Hattiesburg Public School District; (2) defendants, Ray Mabus and Mike Moore in their capacities as Governor and Attorney General of Mississippi, respectively, and the State of Mississippi; and (3) intervenor/defendant, the Forrest County School District and its Board of Trustees; and on the Rule 12(b) motion to dismiss by intervenor/defendant, the Lamar County Board of Education and its Trustees.[1]

I.

Beginning in 1966, the City of Hattiesburg (City) began expanding, through annexations, into Forrest and Lamar Counties; and the citizens in these annexed areas vote in City municipal elections. However, the City's municipal school district boundaries have not expanded with the annexations.

State laws enacted, and in one instance repealed, since 1977 affect the composition of both municipal and county school districts and allow the annexed areas' voters not residing in the City school district to vote for the City's governing authorities, who in turn select the City school board. Accordingly, the plaintiffs allege that these changes constitute voting changes covered by § 5 of the

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[1] The state defendants moved to dismiss for failure to state a claim upon which relief may be granted, Rule 12(b)(6), or alternatively for summary judgment. Rule 12(b) provides that if a 12(b)(6) motion is made and "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Because we consider matters outside the pleadings, we treat the motions to dismiss as summary judgment motions.

Voting Rights Act of 1965 (Act), 42 U.S.C. § 1973c.

The plaintiffs, residents and registered voters in the City and Forrest County and duly appointed members of the Board of Trustees of the City school district, filed this action in February 1990, seeking, *inter alia*, to enjoin the State of MIssissippi and state officials from enforcing three state statutes: (1) the 1977 amendment to Miss. Code Ann. § 21-1-59, Ch. 379, 1977 Miss. Laws 5432; (2) the 1978 revision of the 1977 amendment to § 21-1-59, Ch. 312, 1978 Miss. Laws 418; and (3) the 1986 repealer of Miss. Code Ann. § 37-7-611, Uniform School Law, Ch. 492, § 47, 1986 Miss. Laws 687. The plaintiffs contend that these laws have not been precleared pursuant to § 5 of the Act and are therefore unenforceable.[2]

The Lamar and Forrest County Boards of Education and the members of their Boards of Trustees intervened as defendants. The Lamar County Board filed a counterclaim, alleging that the relief sought by the plaintiffs would violate a desegregation order under which the Lamar County School District
operates, by radically altering the racial balance of that district in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment.

It is undisputed that § 52 of the Uniform School Law, § 37-7-103, was precleared. In effect, it is the successor to one of the three statutes in issue--§ 37-7-611. The Mississippi Supreme Court recently held in *Greenville Public School District, et al. v. Western Line Consolidated School District, et al.*, No. 07-CA-59534 (December 12, 1990), that repeal of § 37-7-611 was precleared when the United

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[2] Pursuant to its March 7, 1991, motion, the United States was granted leave to submit a brief as amicus curiae. The United States contends that § 5 applies and that the requisite preclearance has not been received.

States Attorney General (USAG) failed to interpose an objection to the entire 1986 Uniform School Law. That court also held that if not expressly precleared, § 37-7-611 was precleared implicitly by the express preclearance of § 37-7-103 of the Uniform School Law, because the two provisions are "clearly inconsistent." Id. at 14.

II.

The Act provides that certain jurisdictions may not implement any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" without first obtaining approval from the United States District Court for the District of Columbia or, alternatively, from the USAG that the proposed change does not, or will not, have a discriminatory purpose or effect. 42 U.S.C. § 1973(c).

Due to the expense and burden of instituting and action for declaratory judgment in the D.C. District Court, most covered jurisdictions opt for the USAG approval alternative. The Act and regulations implemented under it provide that once a proposed change has been submitted to the USAG, he has 60 days within which to object. The USAG may request additional information; and if an objection is interposed by the USAG, the submitting party may request reconsideration.
28 C.F.R. §§ 51.37; 51.45. Such a request triggers another 60 day period for the USAG to decide whether to continue or withdraw his objection. *Id.* at § 51.48. If the USAG fails to object within the prescribed time, the jurisdiction is free to implement the new enactment. But, even if the legislation is precleared by the USAG, nothing in the statute prevents a subsequent judicial challenge to that legislation.

We turn first to a discussion of the Mississippi statutes in issue: §§ 21-1-59 and 37-7-611 (repealed).

A.

Prior to 1977, § 21-1-59 provided that "[n]o municipality shall be created or shall change its boundaries so as to include within the limits of such municipality any of the buildings or grounds of any state institution" unless consent was obtained from the governing body of the institution. In 1977, the section was amended to add the following:

> Provided further, that any change in the boundaries of a presently existing municipality *which crosses county lines* shall not affect the public school district located in the annexed area unless and until consent thereto shall have first been obtained in writing from the Board of Trustees of the school district proposed to be partially or wholly included in the change of municipal boundaries.

Ch. 379, 1977 Miss. Laws 543 (emphasis added). This amendment was applicable to certain of the City's annexations; it created an exception to the above referenced § 37-7-611, further discussed below, which provided that such expansion automatically included the municipal school district incorporating the annexed area.

As discussed below, the 1977 amendment was not submitted for preclearance to the USAG until March 23, 1990, because the state defendants believed that the amendment was not subject to § 5, being of the view that it had the effect of preserving the status quo and was thus not a voting "change."

In 1978, § 21-1-59 was amended again. Ch. 312, 1978 Miss. Laws 418. The amendment made the statute applicable to future annexations into a neighboring county by adding the following italicized language:

> Provided further that any changes in the boundaries of a presently existing municipality which *extends into or further extends into a county in which the municipality's principal office is located* shall not affect the public school district located in the annexed area, unless and until consent thereto shall have been first obtained. . . .

(Emphasis added.) A referendum provision was also added for the Jones County-Laurel area concerning the acquisition of county school territory by the Laurel public schools.

The statute, as amended in 1978, was submitted for preclearance in April 1978. The submission did not mention the "extends into or further extends" language, referencing only the referendum. When the State responded to the USAG's request for additional information, again no mention was made of the "extends" language. In March 1981, the USAG interposed no objection.

The 1986 Uniform School Law did not change § 21-1-59. In May 1990, the USAG objected to the 1977 amendment submitted for preclearance, stating:

> [W]e note that the state makes several claims about the preclearance status of the instant changes which appear to seriously misconstrue the structure, purpose, and history of the preclearance requirement. . . .The state. . .contends that a 1978 amendment which clarified the scope of the instant 1977 change was precleared when the

> state in 1981 received preclearance for a separate portion of the 1978 statute.

The USAG rejected this claim.

B.

Prior to being repealed in 1986 by § 47 of the Uniform School Law, Ch. 492, 1986 Miss. Laws 687, the other statute in issue, § 37-7-611, enacted in 1926, stated in part:

> Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate school district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district.

Miss. Code Ann. § 37-7-611 (1972). As discussed above, § 21-1-59, as amended in 1977 and 1978, provided an exception to § 37-7-611, concerning how municipal school districts were affected by certain municipal expansions.

In 1986, the Mississippi Attorney General (MAG) submitted Senate Bill 2117, the Uniform School Law of 1986, for preclearance. The cover memorandum for the submission stated that the law was submitted "in its entirety" and provided:

> The act accomplishes a reorganization and

> streamlining of laws which govern the operation, financing, and administration of the public schools in Mississippi. Senate Bill number 2117 is reform legislation supplemental to and a logical extension of the Education Reform Act of 1982. . . *For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review.*

(Emphasis added.) The memorandum explained 13 sections of the Uniform School Law and their effect on voting.

The repealer of § 37-7-611 was not discussed in this cover letter. However, accompanying the submission was a booklet comparing each section of Senate Bill 2117 with prior law, together with an underlined version of Senate Bill 2117, reflecting the new language as well as deletions of prior language. The booklet's introductory note provided:

> This booklet sets forth on a section by section basis each section of the current law which has been amended followed by each individual section of Senate Bill Number 2117, Laws of Mississippi, 1986 Regular Session. Where the sections of Senate Bill Number 2117 are new law then only those particular sections will be denoted with no comparison of current law. This section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law. Each section of Senate Bill Number 2117 which is the version of the bill as sent to the governor is marked to show the changes made in

> the current law. Underlining indicates language added and a check mark indicates language deleted. By comparing each section of Senate Bill Number 2117 and the current practice, the changes to current law are easily identified.

The above referenced section 47 of the Uniform School Law provided for the repeal of 23 sections, including § 37-7-611. The booklet stated that these 23 sections "which provide for the creation and operation of municipal separate school districts, are hereby repealed."

Section 52 of the Uniform School Law amended § 37-7-103. This provision was specifically discussed in both the cover memorandum accompanying the submission and the booklet. The cover memorandum provided:

> Section 52 amends Section 37-7-103. . .[and] sets forth that . . .the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such district. Additionally, the school board with the consent of the school board of the district involved may add to such school district any part of the school district adjoining same or may detach territory from such school district and annex the same to an adjoining district. The present law enables the county board of education to create, alter or abolish any school districts of such county, other than the municipal separate school districts. In addition, the county board of education with the consent of the board of trustees of the municipal separate school district involved may add to such municipal separate school districts any part of the county adjoining same or may detach territory from such

> municipal separate school district and annex same to an adjoining district in the county school system.

On August 29, 1986, the USAG advised the MAG that he did "not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986), *as identified in your July 22, 1986, letter.*" (Emphasis added.) The letter concluded:

> We note that several of the provisions of Senate Bill No. 2117 (1986) authorize officials of the political subdivisions of the State to make changes affecting voting which are viewed as enabling legislation. Therefore, local officials are not relieved of their responsibility to seek preclearance, pursuant to the requirements of section 5, of any changes effecting voting (e.g., changing voting precinct lines, polling places, special election dates and procedures, boundary changes, etc.) which are adopted as a result of the provisions of Senate Bill No. 2117. 28 C.F.R. 51.14.

The State concedes that the USAG's letter raised doubt about whether the preclearance included provisions other than those 13 specifically listed in its cover memorandum. Therefore, in December 1987, the MAG sought an affirmative preclearance of § 47 insofar as it repealed Miss. Code Ann. § 37-7-611. In the State's resubmission, it reserved the right to object to § 47 being subject to preclearance. The memorandum accompanying the resubmission further stated:

> It is the automatic expansion of the school district which has been repealed by the instant

> submission. The option to expand however, is not foreclosed. Section 52, of the Chapter 492 of the 1986 Laws of Mississippi (precleared by the United States Justice Department on August 29, 1986) provides that the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such school district.

On February 29, 1988, the USAG requested additional information concerning the repeal of § 37-7-611. The State responded; and on March 31, 1989, the USAG objected to the implementation of § 47 of the Uniform School Law insofar as it repealed § 37-7-611. The State requested reconsideration; and by letter dated May 25, 1990, the USAG declined to withdraw his original objection, stating in part:

> It is well-established that to trigger Section 5 review a covered jurisdiction must submit a voting change to the Attorney General in an "unambiguous and recordable manner." [T]he prior submission of the Uniform School Law. . .identified specific voting changes adopted by those statutes, but...[the] submission contained [no] reference to the voting changes which the state now claims were precleared. Section 5, as interpreted by the courts and our submission guidelines, plainly fixes the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing...that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made.

III.

Rule 56 provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The language of Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial." *Celotex corp. v. Catrett,* 477 U.S. 317, 322 (1986).

A.

The intervenors and defendants raise several issues which must be addressed before consideration of the § 5 issues.

1.

The defendants and Lamar County assert that no relief can be granted against the Governor or the MAG because they have no duty to administer laws concerning alteration or definition of school district boundaries. Section 5 provides that state enactments may not be enforced unless they have "been submitted by the *chief legal officer* or other appropriate official of such State or subdivision to the [United States] Attorney General. . . ." 42 U.S.C. § 1973c (emphasis added).

The primary issues in this case are whether the statutes are covered by § 5 and, if so, whether they have

been precleared. In Mississippi, the attorney general is "the chief legal officer and advisor for the state." Miss. Code Ann. § 7-5-1 (1972). The Attorney General is a proper party to this action. The Governor, however, is not responsible for preclearance. The Act uses the phrase chief legal officer or other appropriate state official. Because the MAG is the chief legal officer, no other state official is required to act. The Governor has no statutorily imposed responsibility to ensure that statutes are precleared.[3] Accordingly, he will be dismissed from this action.

2.

The intervenors contend that the plaintiffs lack standing to pursue their claim, because the statutes do not result in a change in voting affecting the Board of Trustees of the City school district. Whether plaintiffs have standing is directly related to whether these statutes are § 5 changes in voting; and as discussed *infra*, they are. To have standing, the plaintiffs must have a "distinct and palpable injury" and a "fairly traceable" causal connection between the claimed injury and the challenged conduct of the defendant. *Warth v. Seldin*, 422 U.S. 490, 501 (1975) and *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977); *see also Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 72 (1978). The Act extends to States and the subdivisions thereof. "It is consistent with the broad purpose of the Act to allow the individual citizen standing to insure that

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[3] Moreover, the Lamar and Forrest County Boards and Trustees have intervened in the suit. To the extent administration or enforcement of the statutes in issue were required, such relief could be directed to these parties.

his city or county government complies with the § 5 approval requirements." *Allen v. State Bd. of Elections,* 393 U.S. 544, 557 (1969). In *Allen*, the Court further stated:

> [T]he major purpose of the Act indicates that appellants may seek a declaratory judgment that a new state enactment is governed by § 5. Further, after proving that the State has failed to submit the covered enactment for § 5 approval, the private party has standing to obtain an injunction against further enforcement, pending the State's submission of the legislation pursuant to § 5.

Id. at 555.

The plaintiffs are residents and registered voters in the City and are members of the Board of Trustees of the City school district. They allege that if the statutes continue to be enforced, voters in the annexed territory who are not residents of the City school district will elect the City mayor and council members who, in turn, will select the trustees of the City school board. The plaintiffs allege a distinct injury under the Act which is directly traceable to the defendants' alleged failure to comply with the requirements of § 5. As noted by the Court in *Allen*, § 5 "might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition." *Id.* at 557. The plaintiffs have standing.

3.

The state defendants contend that the action is barred by the Eleventh Amendment, asserting that only the USAG may sue a State pursuant to the Act. This argument is without merit. The Supreme Court in *Allen*,

discussed *supra*, held that private citizens may bring an action under § 5.

Lamar County argues that the action is barred by the Eleventh Amendment, pursuant to *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). But *Pennhurst* concerned the failure of state officials to carry out their duties under state, not federal, law; the plaintiffs' claim concerns failure to adhere to federal law. Furthermore, as is more than clearly established, Eleventh Amendment immunity does not bar actions for injunctive relief against state officials on the basis of federal law under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908).

4.

The intervenors also contend that the case is not ripe for decision, because a 1966 City annexation into Lamar County was never precleared by the USAG.[4] (The other annexations were precleared.) The 1966 annexation was the basis for all subsequent annexations, because they are contiguous to that annexation. Under Mississippi law, annexations must be "adjacent" to the municipality. Miss. Code Ann. § 21-1-27 (1972).

The status of the 1966 annexation does not affect our jurisdiction to consider whether the statutes in issue are covered by the Act and, if so, whether they have been precleared. The "basic rationale [of the ripeness doctrine] is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Laboratories v. Gardner*, 387 U.S.

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[4] The Lamar County intervenors stated that they were contemplating an amendment to their Answer for leave to file a third party complaint against the City challenging the validity of the 1966 annexation. They have not done so.

(j) To see that fuel and heating are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(j) To see that fuel and heating are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To suspend or dismiss pupils when the best interest of the school makes it necessary, and to deny admission to or suspend or dismiss children who are found to be so mentally or emotionally abnormal that their attendance at the school is detrimental to the best interest of the child involved or to the other pupils attending the school;

(p) To make orders directed to the county superintendent of education for the issuance of pay certificates for lawful purposes on any available funds of the district;

(q) To select superintendents, principals, and teachers in the manner provided by law;

(r) To provide and regulate athletic programs and other school activities; and

(s) To join, in their discretion, for the school trustees in their district, any association of school boards and to pay from local funds other than minimum foundation funds, any membership dues.

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To suspend or dismiss pupils when the best interest of the school makes it necessary, and to deny admission to or suspend or dismiss children who are found to be so mentally or emotionally abnormal that their attendance at the school is detrimental to the best interest of the child involved or to the other pupils attending the school;

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(r) To provide and regulate athletic programs and other school activities; and

(s) To join, in their discretion, for the school trustees in their district, any association of school boards and to pay from local funds other than minimum foundation funds, any membership dues.

(t) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. Activity funds may only be expended for any necessary expenses or travel costs incurred by students and their chaperones in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment or school supplies which the local school governing board, in their discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended, and what type of bookkeeping methods, procedures and auditing shall be utilized in accounting for such funds. The local school governing board shall provide (a) that such school activity funds be audited annually, or (b) that a financial statement for such school activity funds be prepared and spread upon the minutes of the board. The board may utilize the services of a certified public accountant, a public accountant, the State Department of Audit or its own personnel in preparing such audit or financial statement.

(t) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless deposited with existing activity funds, regardless of whether the funds were raised using school facilities. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperones in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in their discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (a) that such school activity funds shall be maintained and expended by the principal of the school generating

the funds in individual bank accounts, or (b) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide ~ that such school activity funds be audited annually. ~ The board may utilize the services of a certified public accountant or the State Department of Audit ~ in preparing such audit. ~ The State Auditor shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions to be implemented by July 1, 1986;

(u) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years.

SOURCES: Laws, 1982, ch. 466, § 1; 1985, ch. 466, § 1; 1985, ch. 493, § 3, eff from and after July 1, 1985.

(u) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years.

(v) To maintain accounts and issue pay certificates on school food service bank accounts; and

(w)(i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any non-minimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than

twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (3/5) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the school building as determined by the averaging of at least two (2) appraisals by members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. The term "school building" as used in this item (w) shall be construed to mean any building or buildings used for classroom purposes in connection with the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this item (w)(i) may include a lease/purchase contract.

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school boards having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in

each participating school district under the procedure hereinabove set forth in item (w)(i). All of the provisions of item (w)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each.

(x) To borrow such funds as may be reasonable and necessary from the federal government, the State of Mississippi or any political subdivision or entity thereof, or any other governmental agency, public interest corporation, or nonprofit entity established or operated to aid school districts in asbestos removal, to be repaid out of any non-minimum program funds; provided, however, that the grant of authority shall in no way be construed to require said boards of trustees to remove asbestos material or substances from any facilities under their control, nor shall there be any liability to said school districts or boards for the failure to so remove such asbestos materials.

(From and after July 1, 1987, this section shall read as follows:)

37-7-301. The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to-wit:

(a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school;

(b) To introduce public school music, art, manual training and other special subjects into either the elementary or high school grades, as the board shall deem proper;

(c) To be the custodians of real and personal school property and to manage, control and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or to expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds, and to delegate such authority to the appropriate officials of the school district;

(f) To visit schools in the district, in their discretion, in a body for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To support, within reasonable limits, the superintendent, administrative superintendent, principal and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools students with what appears to be infectious or contagious diseases; provided, however, such student may be allowed to return to school

upon presenting a certificate from a public health officer or duly licensed physician that the student is free from such disease;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37, Mississippi Code of 1972;

(j) To see that all necessary utilities and services are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To make orders directed to the superintendent of schools or administrative superintendent for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise;

(p) To select all school district personnel in the manner provided by law;

(q) To provide and regulate athletic programs and other school activities;

(r) To join, in their discretion, any association of school boards and other public school related organizations, and to pay from local funds other than minimum foundation funds, any membership dues;

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless deposited with existing activity funds, regardless of whether the funds were raised using school facilities. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperones in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in their discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the per-

sonal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (a) that such school activity funds shall be maintained and expended by the principal of the school generating the funds in individual bank accounts, or (b) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide that such school activity funds be audited annually. The board may utilize the services of a certified public accountant or the State Department of Audit in preparing such audit. The State Auditor shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions to be implemented by July 1, 1986;

(t) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years.

(u) To maintain accounts and issue pay certificates on school food service bank accounts; and

(v)(i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any non-minimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The

resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (3/5) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the school building as determined by the averaging of at least two (2) appraisals by members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. The term "school building" as used in this item (v) shall be construed to mean any building or buildings used for classroom purposes in connection with

the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this item (v)(i) may include a lease/purchase contract.

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school board having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in each participating school district under the procedure hereinabove set forth in item (v)(i). All of the provisions of item (v)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each.

(w) To borrow such funds as may be reasonable and necessary from the federal government, the State of Mississippi or any political subdivision or entity thereof, or any other governmental agency, public interest corporation, or nonprofit entity established or operated to aid school districts in asbestos removal, to be repaid out of any non-minimum program funds; provided, however, that the grant of authority shall in no way be construed to require said boards of trustees to remove asbestos material or substances from any facilities under their control, nor shall there be any liability to said school districts or boards for the failure to so remove such asbestos materials.

(x) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years;

(y) To employ and fix the duties and compensation of such clerical help, other non-instructional personnel deemed necessary pursuant to the recommendation of the superintendent of schools or the administrative superintendent;

(z) To employ and fix the duties and compensation of such legal counsel as deemed necessary; and

(aa) Subject to rules and regulations of the State Board of Education, to purchase, own and operate trucks, vans and other motor vehicles, which shall bear the proper identification required by law.

§ 37-7-409. Funds for joint construction of buildings or operation of schools.

(1) When any school districts shall be authorized to unite, join and cooperate in the construction, erecting and equipping of a joint school building or school facility or in the joint operation of a school erected, constructed and equipped entirely by one of such districts, any school district so authorized may, with the prior consent and approval of the state educational finance commission, expend in the construction, erecting and equipping of such joint school building or the school building which is to be jointly operated any available state public school building funds, or any available funds derived from bonds issued by such school district for such purpose, or any other funds which are otherwise available to such school district for such purpose, as is set forth and stipulated in the agreement entered into between the school districts involved. Except as is herein specifically provided all provisions of law relative to the construction, erecting and equipping of school buildings, the acquisition of land therefor, and the expenditure of funds for such purposes, shall be fully applicable to any joint school building which has been or is to be constructed, erected and equipped or which is to be operated jointly pursuant to an agreement entered into under the provisions of section 37-7-405.

SECTION 25. Section 37-7-409, Mississippi Code of 1972, is amended as follows:

37-7-409. (1) When any school districts shall be authorized to unite, join and cooperate in the construction, erecting and equipping of a joint school building or school facility

or in the joint operation of a school erected, constructed and equipped entirely by one of such districts, any school district so authorized may, with the prior consent and approval of the State Board of Education, expend in the construction, erecting and equipping of such joint school building or the school building which is to be jointly operated any available state public school building funds, or any available funds derived from bonds issued by such school district for such purpose, or any other funds which are otherwise available to such school district for such purpose, as is set forth and stipulated in the agreement entered into between the school districts involved. Except as is herein specifically provided all provisions of law relative to the construction, erecting and equipping of school buildings, the acquisition of land therefor, and the expenditure of funds for such purposes, shall be fully applicable to any joint school building which has been or is to be constructed, erected and equipped or which is to be operated jointly pursuant to an agreement entered into under the provisions of Section 37-7-405.

(2) When a contract is made and entered into for the construction, erecting and equipping of joint school facilities or the joint operation of school facilities erected, constructed and equipped entirely by one of such districts, as provided in section 37-7-405, and where such contract has been approved by the state educational finance commission, then any funds which are available for the lawful operating and incidental expenses of a school district may be expended by such school district as provided and stipulated in the agreement entered into between the school districts involved (including, but not limited to, funds for payment of tuition, funds payable as a rental upon the use of the building and equipment, and funds for maintenance and incidental costs of operation). The board of supervisors, upon receipt of a certified copy of an order adopted by the board of trustees of any school district in the county requesting same, or the governing authorities of the municipality, upon receipt of a certified copy of an order adopted by the board of trustees of a municipal separate school district requesting same, shall at the same time and in the same manner as other ad valorem taxes are levied, levy an annual tax in the amount fixed in such order as may be required to meet any monetary obligation incurred under such contract. Notwithstanding any statute to the contrary, such number of mills as is necessary to defray any such contractual obligation shall be levied. However, this provision shall in no way be construed to increase the number of mills now reimbursable under the homestead exemption laws of the State of Mississippi

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(2) When a contract is made and entered into for the construction, erecting and equipping of joint school facilities or the joint operation of school facilities erected, constructed and equipped entirely by one of such districts, as provided in Section 37-7-405, and where such contract has been approved by the State Board of Education, then any funds which are available for the lawful operating and incidental expenses of a school district may be expended by such school district as provided and stipulated in the agreement entered into between the school districts involved (including, but not limited to, funds for payment of tuition, funds payable as a rental upon the use of the building and equipment, and funds for maintenance and incidental costs of operation). The levying authority for the school district, as defined in Section 37-57-1, upon receipt of a certified copy of an order adopted by the school board of the school district in the county requesting same, shall at the same time and in the same manner as other ad valorem taxes are levied, levy an annual tax in the amount fixed in such order as may be required to meet any monetary obligation incurred under such contract. Notwithstanding any statute to the contrary, such number of mills as is necessary to defray any such contractual obligation shall be levied. However, this provision shall in no way be construed to increase the number of mills now reimbursable under the homestead exemption laws of the State of Mississippi.

(3) Before levying any taxes under the provisions of this section, which levy would exceed the limitations otherwise provided upon the number of mills which may be levied for school purposes, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of millage to be levied and the purpose for which the proceeds are to be used, and the date upon which said board of supervisors proposes to make such levy. Such resolution shall be published once a week for not less than three consecutive weeks, in at least one newspaper published in the county. The first publication of such resolution shall be made not less than twenty-one days prior to the date fixed in such resolution for the levying of taxes, and the last publication shall be made not more than seven days prior to such date. If within fifteen days after the final publication of said resolution, a petition signed by at least twenty percent of the qualified electors of said county, requesting an election on the proposition of levying such additional taxes for school purposes is filed with the clerk of the board of supervisors, such levy shall not be made until an election shall be held to determine whether or not a majority of qualified electors of said county shall favor the additional levy for school purposes. If a majority of the qualified electors of said county voting in such election approves the levying of the additional taxes, then the levy shall be made within the manner, form and time as required by law. If no such petition if filed with the clerk of the board of supervisors, then said levy shall be made by the board of supervisors in the manner, form and time as required by law. If any election is held under the provisions of this section, said

election shall be under the supervision of the county election commission in the manner, form and time as required by law for conducting general elections in this state.

SOURCES: Codes, 1942, § 6328-74; Laws, 1956, ch. 266, § 4; 1960, ch. 301, § 3; 1968, ch. 386, eff from and after passage (approved June 24, 1968).

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(3) Before levying any taxes under the provisions of this section, which levy would exceed the limitations otherwise provided for school purposes, the levying authority for the school district, as defined in Section 37-57-1, shall adopt a resolution declaring its intention so to do, stating the amount of millage to be levied and the purpose for which the proceeds are to be used, and the date upon which it proposes to make such levy. Such resolution shall be published once a week for not less than three (3) consecutive weeks, in at least one (1) newspaper having general circulation in the school district. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the levying of taxes, and the last publication shall be made not more than seven (7) days prior to such date. If within fifteen (15) days after the final publication of said resolution, a petition signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the qualified electors of said school district, requesting an election on the proposition of levying such additional taxes for school purposes is filed with the clerk of the board of supervisors or the clerk of the municipality, as the case may be, such levy shall not be made until an election shall be held to determine whether or not three-fifths (3/5) of qualified electors of said school district shall favor the additional levy for school purposes. If three-fifths (3/5) of the qualified electors of said school district voting in such election approves the levying of the

additional taxes, then the levy shall be made within the manner, form and time as required by law. If no such petition is filed with the clerk as herein provided, then said levy shall be made by the levying authority in the manner, form and time as required by law. If any election is held under the provisions of this section, said election shall be under the supervision of the county or municipal election commission, as the case may be, in the manner, form and time as required by law for conducting general elections in this state.

SECTION 47. Sections 37-7-601, 37-7-603, 37-7-605, 37-7-607, 37-7-609, 37-7-611, 37-7-613, 37-7-615, 37-7-617, 37-7-619, 37-7-621, 37-7-623, 37-7-625, 37-7-627, 37-7-629, 37-7-631, 37-7-633, 37-7-635, 37-7-637, 37-7-639, 37-7-641, 37-7-643 and 37-7-645, Mississippi Code of 1972, which provide for the creation and operation of municipal separate school districts, are hereby repealed.

§37-7-103. Abolition, alteration or creation of districts by county board of education.

After school districts have been reconstituted and created in the manner prescribed by Article 1 of this chapter, the county board of education shall have full jurisdiction, power, and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish any existing district other than a municipal separate school district, to change or alter the boundaries of any such district, to create any new districts, and to otherwise create, alter, or abolish any of the school districts of such county, other than the municipal separate school districts. In addition thereto, with the consent of the board of trustees of the municipal separate school district involved, the county board of education may add to such municipal separate school districts any part of the county adjoining same, and with the consent of the board of trustees of the municipal separate school district involved, the county board may detach territory from such municipal separate school district and annex same to an adjoining district in the county school system.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 52. Section 37-7-103, Mississippi Code of 1972, is amended as follows:

37-7-103. From and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish such existing district, or to reorganize, change or alter the

boundaries of any such district. In addition thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same, and with the consent of the school board of the school district involved, may detach territory from such school district and annex same to an adjoining district.

§37-7-105. Procedure to abolish, alter or create a district in absence of petition filed by electorate.

In cases where the county board of education abolishes, alters, or creates a school district without a petition therefor as is otherwise provided in sections 37-7-107, 37-7-109, the county board of education shall publish the order creating, altering, or abolishing such district or districts in some newspaper published and having a general circulation in such county once each week for three consecutive weeks, which said order shall be duly certified by the president of said county board of education. If no newspaper be published in said county, then such order shall be published for the required time in some newspaper having a general circulation therein, and, in addition, a copy of said order shall be posted for the required time at three public places in the county. The order so published shall contain a provision giving notice that said order shall become final thirty days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final at said time. However, in the event twenty per cent of the qualified electors of any school district created, altered, or abolished by such order shall file a petition with the county board of education, within thirty days after the first publication of said notice, protesting against the creation, alteration, or abolition of such district, then an election shall be called and held, on order of the county board of education, by the county election commission, after publication of legal notice of such election, which said election shall be held within thirty days after the first publication of

the notice of such election. At such election the question shall be submitted to the qualified electors of the district or districts affected and from which a petition is filed as to whether or not such district or districts shall be created, altered, or abolished as provided in the said order of the county board of education. If a majority of those voting in said election in each district affected and from which a petition is filed shall vote in favor of the order of the county board of education then such order shall become final. If a majority of those voting in said election in any district from which a petition is filed shall vote against the order of the county board of education then such order shall be void and of no effect and no further attempt to make the proposed change in such district shall be made for a period of at least two years after the date of said election.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 53. Section 37-7-105, Mississippi Code of 1972, is amended as follows:

37-7-105. In cases where the school board ✓ abolishes, alters or reorganizes a school district without a petition therefor as is otherwise provided in Sections 37-7-107 and 37-7-109, the school board ✓ shall publish the order reorganizing, altering or abolishing such district or districts in some newspaper published and having a general circulation in such district(s) once each week for three (3) consecutive weeks, which said order shall be duly certified by the president of said school board. ✓ If no newspaper be published in said school district, then such order shall be published for the required time in some newspaper having a

general circulation therein, and, in addition, a copy of said order shall be posted for the required time at three (3) public places in the school district. The order so published shall contain a provision giving notice that said order shall become final thirty (30) days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final at said time. However, in the event twenty percent (20%) of the qualified electors of any school district reorganized, altered or abolished by such order shall file a petition with the school board, ✓ within thirty (30) days after the first publication of said notice, protesting against the reorganization, alteration or abolition of such district, then an election shall be called and held, on order of the school board, ✓ by the county election commission(s), after publication of legal notice of such election, which said election shall be held within thirty (30) days after the first publication of the notice of such election. At such election the question shall be submitted to the qualified electors of the district or districts affected and from which a petition is filed as to whether or not such district or districts shall be reorganized, altered or abolished as provided in the said order of the school board. ✓ If a majority of those voting in said election in each district affected and from which a petition is filed shall vote in favor of the order of the school board ✓ then such order shall become final. If a majority of those voting in said election in any district from which a petition is filed shall vote against the order of the school board ✓ then such order shall be void and of no effect and no further attempt to make the proposed change in such district shall be made for a period of at least two (2) years after the date of said election.

§37-7-107. Procedure to abolish district pursuant to petition filed by electorate.

If a petition signed by two-thirds of the qualified electors of an existing school district shall be filed with the county board of education requesting that such district be abolished, then the county board of education shall enter an order abolishing such school district. Such order shall become final without publication thereof upon such date as may be fixed by the county board of education but not later than the first day of July next succeeding the date of such order.

SECTION 54. Section 37-7-107, Mississippi Code of 1972, is amended as follows:

37-7-107. If a petition signed by two-thirds (2/3) of the qualified electors of an existing school district shall be filed with the school board ✓ requesting that such district be abolished, then the school board ✓ shall enter an order abolishing such school district. Such order shall become final without publication thereof upon such date as may be fixed by the school board ✓ but not later than July 1 next succeeding the date of such order.

§37-7-109. Procedure to alter district pursuant to petition filed by electorate.

If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the county board of education requesting that said described territory be taken from such existing district and annexed to an adjacent district, the county board of education, after consideration thereof, and with the consent and approval of the board of trustees of the district to which such territory is to be annexed, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district. However, before doing so, the county board of education must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the county board of education but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in such territory from assessment and liability for the payment of the oustanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebt-

edness existing at the time the territory is taken from such district. In addition thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district.

SECTION 55. Section 37-7-109, Mississippi Code of 1972, is amended as follows:

37-7-109. If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the school board ✓ requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, the said school board, ✓ after consideration thereof, and with the consent and approval of the school board ✓ of the district to which such territory is to be annexed, if such be the case, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. However, before doing so, the school board ✓ must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the school board but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in

such territory from assessment and liability for the payment of the oustanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebtedness existing at the time the territory is taken from such district. In addition thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district.

§37-7-111. Effect of abolition on indebtedness of district; territory of district shall be annexed to another district.

When any school district is abolished under the provisions of sections 37-7-105, 37-7-107, the abolition thereof shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished from year to year according to the terms of such indebtedness until same shall be fully paid. No existing school district shall be abolished unless the territory comprising such district shall be annexed to another district by the county board of education in the same order abolishing the former district.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 56. Section 37-7-111, Mississippi Code of 1972, is amended as follows:

37-7-111. When any school district is abolished or altered under the provisions of this act, the abolition or alteration thereof shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished or altered from year to year according to the terms of such indebtedness until same shall be fully paid. No existing school district shall be abolished unless the territory com-

prising such district shall be annexed to another district in the same order abolishing the former district.

§37-7-113. Necessity of approval by state educational finance commission.

Notwithstanding any of the foregoing provisions of sections 37-7-103 to 37-7-111, it is hereby expressly provided that no order of the county board of education creating, abolishing, or altering any school district, whether same be taken with or without a petition therefor, shall be final unless and until said proposed creation, alteration, or abolition shall be submitted to and approved by the state educational finance commission. In the event the proposed action shall be disapproved by the state educational finance commission, the same shall be void and of no effect. In the event of the filing of any petitions with the county board of education under the provisions of said sections, the county board of education shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the county board of education upon such question shall be final and conclusive for the purpose of the submission of said matter to the state educational finance commission and the approval or disapproval of the action by said commission.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6, eff from and after July 1, 1954.

SECTION 57. Section 37-7-113, Mississippi Code of 1972, is amended as follows:

37-7-113. Notwithstanding any of the foregoing provisions, ✓ it is hereby expressly provided that no order of the school board ✓ reorganizing, abolishing or altering any school district, whether same be taken with or without a

petition therefor, shall be final unless and until said proposed reorganization, alteration or abolition shall be submitted to and approved by the State Board of Education. In the event the proposed action shall be disapproved by the State Board of Education, the same shall be void and of no effect. In the event of the filing of any petitions with the school board ✓ under the provisions of said sections, the school board ✓ shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the school board ✓ upon such question shall be final and conclusive for the purpose of the submission of said matter to the State Board of Education and the approval or disapproval of the action by said board.

§37-41-95. Manner of issuance and form thereof.

All such notes issued by a county shall be signed by the president of the board of supervisors and countersigned by the clerk of the board of supervisors, and the seal of the county shall be impressed on each note as it is issued. All notes issued for a municipal separate school district or special municipal separate school district shall be signed by the mayor of the municipality and shall be countersigned by the clerk of the municipality, and the seal of the municipality shall be affixed thereto. The interest on said notes may be evidenced by proper coupons attached thereto and such coupons may bear only the facsimile signatures of the president of the board of supervisors and the clerk thereof, or the mayor of the municipality and the clerk of the municipality, as the case may be. Such notes shall be issued in such form and in such denominations as the board of supervisors or the governing authorities of the municipality shall determine. All of said notes shall be registered by the clerk of the board of supervisors or the clerk of the municipality in a book kept by him in his office for that purpose.

Where bonds are issued by the board of supervisors or the governing authorities of the municipality, as the case may be, the manner of issuance and the form thereof shall be in compliance with the provisions of sections 19-9-1 through 19-9-31, or sections 21-33-301 through 21-33-329, whichever shall be applicable.

SOURCES: Laws, 1982, ch. 354, § 26, eff from and after July 1, 1982.

SECTION 153. Section 37-41-95, Mississippi Code of 1972, is amended as follows:

37-41-95. All such notes issued by a school district shall be signed by the president of the school board and countersigned by the superintendent of schools, and the seal of the school district shall be impressed on each note as it is issued. The interest on said notes may be evidenced by proper coupons attached thereto and such coupons may bear only the facsimile signatures of the president of the school board and the superintendent of schools. Such notes shall be issued in such form and in such denominations as the school board shall determine. All of said notes shall be registered by the superintendent of schools in a book kept by him in his office for that purpose.

Where bonds are issued by the school board the manner of issuance and the form thereof shall be in compliance with the provisions of Sections 37-59-1 through 37-59-45, except that such bonds may be issued upon approval of three-fifths (3/5) of the electors voting in any election held for the purpose of issuing such bonds.

§37-57-105. Levy by board of supervisors for support of special municipal separate school district; levy to cover expenses, funds for which are not provided by minimum program fund allotments.

(1) In addition to the taxes levied under sections 37-7-739 and 37-57-3, the county board of supervisors, upon receipt of a certified copy of an order adopted by the board of trustees of any special municipal separate school district requesting a tax levy for the support of the school district, and the municipal governing authorities, upon receipt of a certified copy of an order adopted by the board of trustees of any municipal separate school district requesting a tax levy for the support of the school district, shall, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order upon all of the taxable property of such school district; however, such mandatory levy, including the taxes levied under sections 37-7-739 and 37-57-3, shall not exceed the millage limitation set forth in section 37-57-107, but the county board of supervisors and the municipal governing authorities, respectively, may, in their discretion, levy an additional ad valorem tax for the support of such school districts which shall not be subject to any millage limitation, but the cumulative ad valorem taxes levied for the support of such school districts shall be subject to the ten percent (10%) increase limitation set forth in section 37-57-107. The proceeds of such tax levy shall be placed in the respective county or municipal depository to the credit of the school district and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, ex-

tending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of such school district, funds for which are not provided by minimum program fund allotments.

(2) In addition to the taxes levied under section 37-57-1, the county board of supervisors, upon receipt of a certified copy of an order adopted by the board of trustees of any school district in the county school system requesting a tax levy for the support of the school district, may, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order upon all of the taxable property of such school district. The proceeds of such tax levy shall be placed in the county depository to the credit of the school district and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, extending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of such school district, funds for which are not provided by minimum program fund allotments.

When the tax is levied in a county which is the home county of a line school district or upon the territory of any school district located in two (2) or more counties, the order of the county board of education or board of trustees, as the case may be, requesting the levying of such tax shall be certified to the board of supervisors of each of the counties involved, and each of the board of supervisors shall levy the tax in the manner specified herein. The taxes so levied shall be collected by the tax collector of each of the counties involved and remitted by the tax collec-

tor to the county depository of the home county to the credit of the school district involved.

SOURCES: Laws, 1983, ch. 471, § 23, eff from and after July 1, 1983.

SECTION 163. Section 37-57-105, Mississippi Code of 1972, is amended as follows:

37-57-105. In addition to the taxes levied under Section 37-57-1, the levying authority for the school district, as defined in Section 37-57-1, upon receipt of a certified copy of an order adopted by the school board of the school district ✓ requesting an ad valorem tax effort in dollars for the support of the school district, shall, at the same time and in the same manner as other ad valorem taxes are levied, levy an annual ad valorem tax in the amount fixed in such order upon all of the taxable property of such school district. In making such levy, the levying authority shall make allowance for anticipated delinquencies and costs of collection so that the net amount of money to be produced by such collection so that the net amount of money to be produced by such levy shall be equal to the amount which is requested by said school board. The proceeds of such tax levy, excluding levies for the payment of the principal of and interest on school bonds or notes, shall be placed in the school depository to the credit of the school district and shall be expended in the manner provided by law for the purpose of supplementing teachers' salaries, extending school terms, purchasing furniture, supplies and materials, and for all other lawful operating and incidental expenses of such school district, funds for which are not provided by minimum program fund allotments.

When the tax is levied ✓ upon the territory of any school district located in two (2) or more counties, the order of the school board ✓ requesting the levying of such tax shall be certified to the levying authority of each of the counties

involved, and each of the levying authorities shall levy the tax in the manner specified herein. The taxes so levied shall be collected by the tax collector of the levying authority involved and remitted by the tax collector to the school depository of the home county to the credit of the school district involved as provided above.

The aggregate receipts from ad valorem taxes levied for school district purposes pursuant to this section and Sections 37-57-1 and 37-57-3 shall be subject to the increased limitation under Section 37-57-107; however, if the ad valorem tax effort in dollars requested by the school district for the fiscal year exceeds the next preceding fiscal year's ad valorem tax effort in dollars by more than seven percent (7%) but not more than ten percent (10%), then the school board shall publish notice thereof once each week for three (3) consecutive weeks in a newspaper having general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the May regular meeting of the school board. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question of exceeding the next preceding fiscal year's ad valorem tax effort in dollars by more than seven percent (7%) but not more than ten percent (10%), then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon such question. The election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. The ballot shall contain the language "For the School Tax Increase Over Seven Percent (7%)" and "Against the School Tax Increase Over Seven Percent (7%)." If a majority of the qualified electors

of the school district who voted in such election shall vote in favor of the question, then the stated increase requested by the school board shall be approved. For the purposes of this paragraph, the revenue sources excluded from the increase limitation under Section 37-57-107 shall also be excluded from the limitation described herein in the same manner as they are excluded under Section 37-57-107.

§ 37-57-107. Limitation on increases of taxes levied for school district purposes; disposition of excess revenues; ceiling on ad valorem taxes for support of municipal separate district and special municipal district.

(1) Beginning with the tax levy for the 1984 fiscal year and for each fiscal year thereafter, the aggregate receipts from taxes levied for school district purposes pursuant to section 37-57-105 and sections 37-7-739, 37-57-1 and 37-57-3 shall not exceed the aggregate receipts from those sources during the next preceding fiscal year plus an increase not to exceed ten percent (10%). The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt, which were not assessed in the next preceding year may be excluded from the ten percent (10%) increase limitation set forth herein. Taxed levied for payment of principal of and interest on general obligation school bonds issued heretofore or hereafter shall be excluded from the ten percent (10%) increase limitation set forth herein. Any additional millage levied to fund any new program mandated by the legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter.

The ten percent (10%) increase limitation prescribed in this subsection may be increased an additional amount only when the county board of supervisors or municipal governing authorities, as the case may be, has determined the need for additional revenues and has held an election on the question of raising the limitation prescribed in this subsection. The limitation may be increased only if a majority of the qualified electors

in the school district vote in the election and if a majority of those voting in the election shall vote for the proposed increase. The resolution, notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the respective county board of supervisors or municipal governing authorities. Revenues collected for the fiscal year in excess of the ten percent (10%) increase limitation pursuant to an election shall be included in the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation applies for subsequent fiscal years.

Except as otherwise provided for excess revenues generated pursuant to an election, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section and sections 37-7-739, 37-51-1 and 37-57-3 exceed the increase limitation, then it shall be the mandatory duty of the board of trustees of the school district to deposit such excess receipts over and above the increase limitation into a special account and credit it to the fund for which the levy was made. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the budgets for the school districts for the purpose for which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

(2) Ad valorem taxes levied by the county board of supervisors for the support of any special mu-

nicipal separate school district pursuant to section 37-57-105 and section 37-7-739, and ad valorem taxes levied by the municipal governing authorities for the support of any municipal separate school district pursuant to section 37-57-105 and section 37-57-3, shall not exceed twenty-eight (28) mills for each school district, unless otherwise provided by section 37-57-105.

SOURCES: Law, 1983, ch. 471, § 24, eff from and after July 1, 1983.

SECTION 164. Section 37-57-107, Mississippi Code of 1972, is amended as follows:

37-57-107. ✓ Beginning with the tax levy for the 1987 fiscal year and for each fiscal year thereafter, the aggregate receipts from taxes levied for school district purposes pursuant to Sections 37-57-105 and ✓ 37-57-1 ✓ shall not exceed the aggregate receipts from those sources during the next preceding fiscal year plus an increase not to exceed ten percent (10%). The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt which were not assessed in the next preceding year may be excluded from the ten percent (10%) increase limitation set forth herein. Taxes levied for payment of principal of and interest on general obligation school bonds issued heretofore or hereafter shall be excluded from the ten percent (10%) increase limitation set forth herein. Any additional millage levied to fund any new program mandated by the Legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter. For the purposes of this subsection, the term "new program" shall include, but shall not be limited to, the Early Childhood Education Program required to commence with the 1986-1987 school year as provided by Section 37-21-7,

and any additional millage levied and the revenue generated therefrom, which is excluded from the limitation for the first year of the levy, to support the mandated Early Childhood Education Program shall be specified on the minutes of the school board and of the governing body making such tax levy.

The ten percent (10%) increase limitation prescribed in this section may be increased an additional amount only when the school board has determined the need for additional revenues and has held an election on the question of raising the limitation prescribed in this section. The limitation may be increased only if three-fifths ($^3/_5$) of those ✓ voting in the election shall vote for the proposed increase. The resolution, notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the respective school boards. Revenues collected for the fiscal year in excess of the ten percent (10%) increase limitation pursuant to an election shall be included in the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation applies for subsequent fiscal years.

Except as otherwise provided for excess revenues generated pursuant to an election, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section and Sections ✓ 37-57-1 ✓ exceed the increase limitation, then it shall be the mandatory duty of the school board of the school district to deposit such excess receipts over and above the increase limitation into a special account and credit it to the fund for which the levy was made. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the budgets for the school districts for the purpose for which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of

excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

§ 37-59-11. Calling of election on issuance of bonds.

Whenever either a certified copy of a resolution adopted by the board of trustees of a school district, or a petition signed by not less than ten per centum of the qualified electors of a school district, fixing the maximum amount of such bonds and the purpose or purposes, for which they are to be issued, shall be filed with the board of supervisors of the county or the governing authorities of the municipality, as the case may be, requesting that an election be called to determine whether or not the bonds of such school district shall be issued for any of the purposes enumerated in section 37-59-3, the board of supervisors of the county or the governing authorities of the municipality, as the case may be, within sixty days after receipt thereof, shall adopt a resolution calling an election to be held within such school district for the purpose of submitting to the qualified electors thereof the question of the issuance of bonds in the amount and for the purpose or purposes as set forth in such resolution or petition. The resolution calling such election shall designate the date upon which the election shall be held and the place or places within such district at which such election shall be held, which place or places may or may not be the school house or school houses in such district.

SOURCES: Codes, 1942, § 6532-04; Laws, 1950, ch. 231, § 4, eff from and after July 1, 1950.

SECTION 170. Section 37-59-11, Mississippi Code of 1972, is amended as follows:

(Until June 30, 1987, Section 37-59-11 shall read as follows:)

37-59-11. (1) Before any money shall be borrowed under the provisions of this act, the school board of the school district shall adopt a resolution declaring the necessity for borrowing such money, declaring its intention to issue the negotiable bonds of the school district as evidence of same. The resolution shall also set forth the amount of the indebtedness to be incurred and the purpose or purposes for which the money so borrowed is to be expended, including the approximate cost of the alterations, additions and repairs to be made.

(2) The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in at least one (1) newspaper published in the school district involved, with the first publication thereof to be made not less than twenty-one (21) days prior to the date upon which the school board is to take final action upon the question of authorizing the borrowing of said money. If no newspaper is published in such school district, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in said school district. If no peitition requesting an election is filed prior to such meeting as is hereinafter provided, then the school board shall, at said meeting, by resolution spread upon its minutes, give final approval to the borrowing of said money and shall authorize the issuance of negotiable bonds for the school district by the board of supervisors or the governing authorities of the municipality, as the case may be.

(3) If at any time prior to said meeting a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question of incurring said indebtedness, then the school board shall adopt a resolution

calling an election to be held within such school district upon the question of the incurring of said indebtedness for the purposes and in the amount requested. Such election shall be called and held, and notice thereof shall be given, as provided in Sections 37-59-13 and 37-59-15.

(From and after July 1, 1987, Section 37-59-11 shall read as follows:)

37-59-11. (1) Before any money shall be borrowed under the provisions of this act, the school board of the school district shall adopt a resolution declaring the necessity for borrowing such money, declaring its intention to borrow such money and to issue the negotiable bonds of the school district as evidence of same, specifying the amount to be so borrowed, and how such indebtedness is to be evidenced. Such resolution shall also set forth the nature and approximate cost of the alterations, additions and repairs to be made, and shall declare in said resolution that no funds are available in the school funds of the district or from any other source with which to make such repairs, alterations, additions, purchases, erections or improvements.

(2) Whenever a resolution is adopted by the school board as provided in subsection (1), or a petition signed by not less than ten percent (10%) of the qualified electors of a school district, fixing the maximum amount of such school bonds and the purpose or purposes for which they are to be issued, the school board shall adopt a resolution calling an election to be held within such school district for the purpose of submitting to the qualified electors thereof the question of the issuance of bonds in the amount and for the purpose or purposes as set forth in such resolution or petition. The resolution calling such election shall designate the date upon which the election shall be held and the place or places within such district at which such election shall be held, which place or places may or may not be the school house or school houses in such district.

§ 37-59-105. Declaration of intention by local authorities; election; issuance of indebtedness.

At its first regular meeting following the receipt of the resolution of the board of trustees of a school district, the board of supervisors or governing authorities of the municipality, as the case may be, shall declare its intention to authorize the borrowing of said money and to issue the negotiable notes or certificates of indebtedness of the school district as evidence of same. Said resolution shall also set forth the amount of the indebtedness to be incurred and the purpose or purposes for which the money so borrowed is to be expended. The said resolution so adopted shall be published once each week for two (2) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than fifteen (15) days prior to the date upon which the board of supervisors or governing authorities of the municipality, as the case may be, are to take final action upon the question of authorizing the borrowing of said money. If no petition requesting an election is filed prior to such meeting as is hereinafter provided, then the board of supervisors or the governing authorities of the municipality, as the case may be, shall, at said meeting, by resolution spread upon its minutes, give final approval to the borrowing of said money and shall authorize the issuance of negotiable notes or certificates of indebtedness of the school district therefor in accordance with the provisions of this article.

If at any time prior to said meeting a petition signed by not less than twenty per cent (20%) of the qualified electors of the school district in-

volved shall be filed with the board of supervisors or governing authorities of the municipality, as the case may be, requesting that an election be called on the question of incurring said indebtedness, then the board of supervisors or governing authorities of the municipality shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of the incurring of said indebtedness of the purposes and in the amount requested. Such election shall be called and held, and notice thereof shall be given, in the same manner provided in Article 1 of this chapter for elections upon the question of the issuance of the bonds of school districts, and the results thereof shall be certified to the board of supervisors or the governing authorities of the municipality, as the case may be. If a majority of the qualified electors of the school district shall vote in favor of incurring said indebtedness, then the board of supervisors or governing authorities of the municipality, as the case may be, shall proceed to issue said negotiable notes or certificates of indebtedness as prayed for in the original resolution of the board of trustees; however, if a majority of the qualified electors voting in said election vote against incurring said indebtedness, then said notes or certificates of indebtedness shall not be issued.

Money may be borrowed under the provisions of this article and the negotiable notes or certificates of indebtedness evidencing same may be issued as provided in this article (1) without the necessity of being authorized in an election called for that purpose, except where a petition requesting an election is filed as provided herein

and (2) without the necessity of giving notice thereof except as specifically provided herein.

SECTION 185. Section 37-59-105, Mississippi Code of 1972, is amended as follows:

37-59-105. The school board shall by resolution declare its intention to authorize the borrowing of said money and to issue the negotiable notes or certificates of indebtedness of the school district as evidence of same. Said resolution shall also set forth the amount of the indebtedness to be incurred and the purpose or purposes for which the money so borrowed is to be expended. The said resolution so adopted shall be published once each week for two (2) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than fifteen (15) days prior to the date upon which the school board is to take final action upon the question of authorizing the borrowing of said money. If no petition requesting an election is filed prior to such meeting, then the school board shall, at said meeting, by resolution spread upon its minutes, give final approval to the borrowing of said money and shall authorize the issuance of negotiable notes or certificates of indebtedness of the school district therefor in accordance with the provisions of this article.

If at any time prior to said meeting a petition signed by not less than twenty percent (20%) of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question of incurring said indebtedness, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of the incurring of said indebtedness for the purposes and in the amount requested. Such election shall be called and held, and notice thereof shall be given, in the same manner provided in

Article 1 of this chapter for elections upon the question of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. ✓ If three-fifths (3/5) of the qualified electors voting in said election shall vote in favor of incurring said indebtedness, then the school board ✓ shall proceed to issue said negotiable notes or certificates of indebtedness as prayed for in the original resolution of the school board; ✓ however, if less than three-fifths (3/5) of the qualified electors voting in said election vote in favor of incurring said indebtedness, then said notes or certificates of indebtedness shall not be issued.

Money may be borrowed under the provisions of this article and the negotiable notes or certificates of indebtedness evidencing same may be issued as provided in this article (1) without the necessity of being authorized in an election called for that purpose, except where a petition requesting an election is filed as provided herein and (2) without the necessity of giving notice thereof except as specifically provided herein.

SECTION 203. The qualified electors of any county having an elected county superintendent of education on July 1, 1986, shall decide at the November 1988 general election whether (a) to continue to have such office elected, or (b) to abolish such office of county superintendent of education in the county. The county board of supervisors of such counties shall publish notice of said election once a week for at least three (3) consecutive weeks prior to the November 1988 general election in at least one (1) newspaper published or circulated in such county. The proposition shall be submitted to a vote of all qualified electors residing outside the territory of any municipal separate or special municipal separate school district located within such county. Such election shall be held in the same manner as other elections are held in the county. If a majority of the qualified electors who voted in such election vote in favor of the abolition of such office, such abolishment shall be effective at the end of any regular term of office or whenever a vacancy shall occur in said office. In counties where the office of elected county superintendent of education has been abolished, it shall not be reinstated.

APPENDIX G

MISS. CODE ANN. § 37-7-611

§ 37-7-611. Merging of adjacent school districts.

Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district. However, when any such extension, that is, an extension taking in a part of or all of an adjacent school district, becomes effective subsequent to September 1 of any fiscal year of said school district, that portion of the existing adjacent school district which is included because of the extension of the corporate limits of such municipality shall become annexed to the municipal separate school district immediately but shall remain under the jurisdiction of said adjacent school district for the remainder of such fiscal year for school purposes only, and it shall be the duty of such existing adjacent school district to continue to provide for the education and transportation for the balance of such fiscal year of the pupils residing in that portion of said existing adjacent school district included within the municipal separate school district by virtue of such extension at the expense of the existing adjacent school district, all just as though the extension of the municipal boundaries had not become effective until the last day of the fiscal year of the school districts involved; when the school building or buildings of any such adjacent school district in the county school system shall be included within the corporate limits of the municipality by reason of any such extension of such corporate limits then the whole of such adjacent school

district shall automatically be added to and become a part of such municipal separate school district as added territory.

When the corporate limits of any municipality shall be extended but the school building or buildings of an existing adjacent school district are not included therein, then, on petition of a majority of the qualified electors residing in that portion of such existing adjacent district which is not included within the corporate limits of the municipality filed with the governing authorities of the municipality, that part of such adjacent district not included within the corporate limits of the municipality shall be added to the municipal separate school district as added territory and shall be operated thereafter as a part of the municipal school district system. However, when the corporate limits of a municipality are extended so as to include within the corporate limits one or more school buildings being used as attendance centers of an adjacent school district having more than one attendance center, but all of the school buildings of such district are not so included within the corporate limits, then, in addition to that portion of the adjacent school district included within the corporate limits as extended, which shall be automatic as hereinabove set forth, there shall become a part of such municipal separate school district as added territory that area or areas designated by agreement between the trustees of the municipal separate school district and the trustees of the adjacent school district which, before becoming effective, must be approved by the state educational finance commission, the effective date thereof to be designated by proper order of the educational finance commission. In the event no agreement has been reached between the trustees of the respective school districts and filed with the educational finance commission within ninety days from the effective date of the expansion of the municipal limits, then the educational finance commission, on its own motion or on motion of either of the school districts involved, shall by

order spread upon its minutes, designate such area outside the municipal limits, as extended, as shall be included in the municipal separate school district as added territory, together with the effective date thereof. Either school district involved shall have the right to appeal from the decision of the educational finance commission in the manner provided by sections 37-45-51 and 37-45-61.

SOURCES: Codes, 1942, § 6411-06; Laws, 1953, Ex. Sess., ch. 23, § 6; 1959 Ex. Sess., ch. 29, § 1.

APPENDIX H

[SEAL] **U.S. Department of Justice**

WBR:SSC:MSB:gmh
DJ 166-012-3
P9110
P9535-9549

Washington, D.C. 20530

August 29, 1986

Honorable Edwin Lloyd Pittman
Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Chapter 492, S.B. No. 2117 (1986), which amends various provisions of the code affecting public schools in the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 23, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

The Attorney General does not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986), as identified in your July 22, 1986, letter. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

We note that several of the provisions of Senate Bill No. 2117 (1986) authorize officials of the political subdivisions of the State to make changes affecting voting which are viewed as enabling legislation. Therefore, local officials are not relieved of their responsibility to seek preclearance, pursuant to the requirements of Section 5, of any changes affecting voting (*e.g.*, changing voting precinct lines, polling places, special election dates and procedures, boundary changes, etc.) which are adopted as a result of the provisions of Senate Bill No. 2117. 28 C.F.R. 51.14.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: /s/ Sandra Coleman
for Gerald W. Jones
Chief, Voting Section

APPENDIX I

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL
TELEFAX NUMBER (601) 359-3796

CARROLL GARTIN JUSTICE BUILDING
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220

TELEPHONE (601) 359-3680

EDWIN LLOYD PITTMAN
ATTORNEY GENERAL

STEPHEN J. KIRCHMAYR
Deputy Attorney General

SIDNEY J. MARTIN
Deputy Attorney General

December 30, 1987

Honorable Gerald W. Jones
Chief, Voting Section
Civil Rights Division
Voting Section
P. O. Box 66128
Washington, D.C. 20035-6128

Re: SUBMISSION OF CHAPTER 492, SECTION 47; [MISS. CODE ANN. 37-7-611 (1972)] OF THE 1986 LAWS OF MISSISSIPPI

Dear Mr. Jones:

Please find enclosed herein the above referenced legislation submitted pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973(c) to the Attorney General of the United States.

Expedited consideration of this submission will be greatly appreciated.

Very truly yours,

/s/ Edward Lloyd Pittman
Edwin Lloyd Pittman
Attorney General

Enclosure

ELP/JE/vh

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965 AS AMENDED, 42 U.S.C. § 1973(c)

TO: The Attorney General of the
United States of America
The Honorable Edwin Meese, III

SUBMISSION OF CHAPTER 492, SECTION 47; [MISS. CODE ANN. 37-7-611 (1972)] OF THE 1986 LAWS OF MISSISSIPPI

EXPEDITED CONSIDERATION REQUESTED

Pursuant to Section 5 of the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. § 1973(c) [hereinafter referred to as Section 5] and the U.S. Department of Justice's Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended, 28 C.F.R. §§ 51.1 *et seq.* (1987), the State of Mississippi, by and through the Attorney General of the State of Mississippi, Edwin Lloyd Pittman, respectfully submits to the Attorney General of the United States Chapter 492, Section 47; [Miss. Code Ann. §37-7-611 (1972)] of the 1986 Laws of the State of Mississippi currently codified at Miss. Code Ann. § 37-7-611 (1972) [hereinafter sometimes referred to as Chapter 611 and/or instant submission]. In making this submission the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether the instant submission is subject to the preclearance requirements of Section 5. For this submission, the State of Mississippi respectfully states as follows:

28 C.F.R. § 51.27(a).

A copy of Chapter 492, Section 47; [Miss. Code Ann. §37-7-611 (1972)] as approved on April 15, 1986, is attached hereto as Appendix A. (See Chapter 492 attached hereto as Appendix A-1).

28 C.F.R. § 51.27(b).

Chapter 492, Section 47 of 1986 repeals a series of Code sections dealing with the creation, abolition and administration of school districts. The instant submission concerns the repeal of Miss. Code Ann. §37-7-611 (1972). Accordingly, §37-7-611 is attached hereto as Appendix B and Appendix B-1. Miss. Code Ann. §37-7-611 (1972) is the codification of Chapter 29 of the 1959 (Extraordinary Session) Laws of Mississippi, and is attached hereto as Appendix C.

28 C.F.R. § 51.27 (c).

Chapter 492 of the 1986 Laws of Mississippi is known and cited as the "Mississippi Uniform School Law of 1986." It is a comprehensive and detailed enactment dealing with the whole range of issues facing education. In order to congregate all laws of the instant subject matter into one uniform act, other piecemeal legislation had to be repealed. The major part of Chapter 492, as it deals with the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. §1973 (c), has already been precleared by the United States Justice Department on August 29, 1986.

The subject of the instant submission is Miss. Code Ann. §37-7-611 (1972) which is the codification of Chapter 29 of the 1959 (Extraordinary Session) Laws of Mississippi. Chapter 29 provided for the merging of adjacent school districts.

> "Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the ex-

> tension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district."

Chapter 29 further provided that when the corporate limits of any municipality shall be extended but the school building or buildings of an existing adjacent school district are not included therein, then on petition of a majority of the qualified electors residing in that portion of such existing adjacent district which is not included within the corporate limits of the municipality filed with the governing authorities of the municipality that part of such adjacent district not included within the corporate limits of the municipality shall be added to the municipal separate school district as added territory and shall be operated thereafter as a part of the municipal school district system.

28 C.F.R. § 51.27 (d).

The person making this submission is Edwin Lloyd Pittman, the Attorney General of and the Chief Legal Officer for the State of Mississippi, whose address is Post Office Box 220, Jackson, Mississippi, 39205, and whose telephone number is (601) 359-3680.

28 C.F.R. § 51.27 (e).

The name of the submitting authority and the jurisdiction responsible for the change is the State of Mississippi.

28 C.F.R. § 51.27 (f).

Not applicable.

28 C.F.R. § 51.27 (g).

The Legislature of the State of Mississippi was responsible for enacting the chapter law herein submitted by legislative act.

28 C.F.R. § 51.27 (h).

The legislative power of the State of Mississippi is vested in a legislature which shall consist of a senate and a house

of representatives as set forth by Article 4, Section 33 of the Mississippi Constitution. Article 4, Section 59 of the Mississippi Constitution provides that bills may originate in either house and Article 4, Section 62 allows that no amendment to bills by one house shall be concurred in by the other except by a vote of the majority thereof. Article 4, Section 71 denotes that every bill introduced into the legislature shall have a title which clearly indicates the subject matter or matters of the proposed legislation. Further, Article 4, Section 72, sets out that every bill which passed both houses shall be presented to the Governor for his signature; but if he does not approve such bill, he shall return it, with his objections, at which point, both houses shall reconsider such bill and upon a two-thirds ($^2/_3$) vote of each house, it shall become a law.

28 C.F.R. § 51.27 (i).

Chapter 492, Section 47 was adopted effective April 15, 1986.

28 C.F.R. § 51.27 (j).

Section 47 of Chapter 492 took effect and was in force from and after July 1, 1987.

28 C.F.R. § 51.27 (k).

The Attorney General of Mississippi cannot state that the instant submission has not yet been enforced or administered because such instant submission has been enforced and administered.

28 C.F.R. § 51.27 (l).

The instant submission affects each separate school district in the entire State of Mississippi.

28 C.F.R. § 51.27 (m).

The obvious reason for this change is to void any piecemeal legislation dealing with the subject addressed in the uniform school law. Any indirect changes in the electoral

procedure or process repealed by Section 47 are contained as new legislation in the other sections of Chapter 492, most of which have already been precleared by the United States Justice Department. Section 47 is simply a house cleaning measure for Chapter 492.

It is the automatic expansion of the school district which had been repealed by the instant submission. The option to expand however, is not forclosed. Section 52, of the Chapter 492 of the 1986 Laws of Mississippi (precleared by the United States Justice Department on August 29, 1986) provides that the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such school district.

28 C.F.R. § 51.27 (n).

The instant submission does not and will not adversely affect racial or language minority groups. The instant submission does not affect language minority groups as such. The instant submission does *not* have the purpose, and it does *not* have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

28 C.F.R. § 51.27 (o).

Presently there is pending in the Jackson Division of the United States District Court for the Southern District of Mississippi, a civil action which challenges the current codification of Chapter 492 because such chapter had not been precleared under Section 5 of the Voting Rights Act of 1965, *Kirksey, et al v. Pittman, et al*, Civil Action No. J86-0558(B) (S. D. Miss. filed August 12, 1986). However, since the filing of the suit substantive parts of 492 have been precleared by the Justice Department on August 29, 1986. The attorney for the plaintiffs in that litigation is:

Carroll Rhodes, Esquire
P.O. Box 588

Hazelhurst, Mississippi 39083
(601) 894-4323

28 C.F.R. § 51.27(p).

"The Mississippi Uniform School Law of 1986" completely revamps and preempts any legislation of the general subject matter. Chapter 492 has been precleared on August 29, 1986. There is no direct correlation among any repealed statues and any section of Chapter 492. Therefore, a statement that the prior practice has been precleared or is not subject to the preclearance requirement cannot be made.

28 C.F.R. § 51.27 (q).

Not applicable.

28 C.F.R. § 51.27 (r).

This submission does not concern a redistricting, annexation, or other complex change.

28 C.F.R. § 51.28(a) Demographic Information.

(1) Not applicable.

(2) Mississippi Municipalities and Counties in Mississippi, apparently do not maintain records which identify registered voters by race and language group.

(3) No estimates of population by race and language group were made in connection with the adoption of the chapter law herein being submitted.

(b) Maps.

(1)-(6) All of these sections are irrelevant to this submission because this submission does *not* revise the constituency that votes, nor does this submission affect prior or new boundaries of voting units, the prior or new boundaries of voter precincts, the location of racial and language minority groups, the location of prior new polling places or the location of prior and new voter registration sites.

(c) Annexations.

Not applicable.

(d) Election Returns.

Not applicable.

(e) Language Usage.

The submitted chapter law does not affect the use of language in the electoral process.

(f) Publicity and Participation.

The submitted chapter law does not involve a controversial or potentially controversial matter.

(1) No newspaper articles are attached.

(2) There are apparently no available public notices concerning the adoption of the submitted chapter law.

(3) The entries in the journals of the Mississippi Senate and the Mississippi House of Representatives concerning the adoption of the submitted chapter laws are attached as Appendix D.

(4) There are no statements concerning the proposed change.

(5) There are no comments from the general public.

(6) See (3) above.

(g) Availability of the Submission.

Not applicable.

(h) Minority Group Contacts.

The following black adult citizens of Mississippi can be expected to be familiar with the instant submission or have been active in the political process:

The Honorable Reuben V. Anderson
Associate Justice
Supreme Court of Mississippi
P.O. Box 117
Jackson, Mississippi 39205
(601) 359-3697

The Honorable Fred L. Banks, Jr.
Circuit Judge
Seventh Circuit Court District
P.O. Box 327
Jackson, Mississippi 39205
(601) 968-6659

The Honorable George S. Smith
President, Board of Supervisors of Hinds County
P.O. Box 205
Terry, Mississippi 39170
(601) 968-6695

Pursuant to 28 C.F.R. § 51.34, the State of Mississippi respectfully requests that this submission be given *expedited consideration* due to the fact it is involved in pending litigation.

If the Attorney General of the United States needs any further information concerning this submission, the State of Mississippi will attempt to supply it.

This, the 30th day of December, 1987.

Respectfully submitted,

STATE OF MISSISSIPPI

BY: /s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN
ATTORNEY GENERAL
STATE OF MISSISSIPPI

Attorney and Chief Legal Officer
for the State of Mississippi

John H. Emfinger
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680

APPENDIX J

[SEAL] **U.S. Department of Justice**

WBR:MAP:JAR:gmh
DJ 166-012-3
T0966
T3369

Washington, D.C. 20530

FEB 28 1988

Honorable Mike Moore
Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Section 47 of Chapter 492 (1986), insofar as it repeals Miss. Code §37-7-611 concerning the extension of municipal separate school district boundaries in the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 31, 1987. Although we noted your request for expedited consideration, we have been unable to respond until now.

Our analysis indicates that the information sent is insufficient to enable us to determine that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Therefore, please provide the following information:

1. A detailed description of the process that resulted in the repeal of §37-7-611. In that regard, we understand that a committee appointed by the State Auditor prepared draft legislation which was the basis for Chapter 492, and that the committee's proposal did not provide for the repeal of §37-7-611. Identify the specific manner in which the repealer was incorporated into Chapter 492 and, if it

was added by an amendment, provide a breakdown of votes, by member, for that amendment. Identify the legislators who were the principal proponents of the repeal and provide daytime telephone numbers at which they may be contacted. Provide copies of any legislative analyses of the meaning and effect of the repealer and all newspaper articles, editorials, and letters to the editor concerning the repeal of §37-7-611.

2. A detailed explanation of the reasons for the repeal of §37-7-611, and identify the sources of your information as to the reasons for the repeal. Indicate whether the repeal was related to any particular pending or planned annexations by municipalities which have municipal separate school districts. We note that you have indicated that the reason for repealing §37-7-611 was that it was "piecemeal legislation" concerning the method by which school district boundaries may be altered. However, it has been alleged that there are special circumstances which justify the provision in §37-7-611 that when a municipality with a municipal separate school district annexes territory located in an adjacent school district the boundaries of the municipal school district also are automatically extended into the adjacent district. One such special circumstance may be that the persons annexed into the municipality thereby become eligible to vote for the municipal governing body which in turn appoints the members of the municipal school district's board of trustees. Indicate the extent to which this circumstance was considered in determining that §37-7-611 should be repealed. It also would be helpful if you would provide information as to the legislative history of §37-7-611 and the reasons for its adoption.

3. Identify the minority legislators or minority citizens who specifically were consulted regarding the inclusion of this repealer in Chapter 492 and summarize the comments they provided. If no minority legislators or citizens were consulted, explain the reasons for this omission.

4. It has been alleged that annexations by municipalities which have municipal separate school districts generally are of predominantly white residential areas, and that the repeal of §37-7-611's automatic boundary extension provision will permit municipal annexation of these areas and, at the same time, allow those whites to remain in predominantly white school districts that adjoin predominantly black municipal school districts. Please provide us with whatever information the state has which may be enlightening on this issue. In particular, include information on the population, by race, of all residential areas annexed during the last five years to municipalities with separate school districts and the population, by race, of any annexations proposed by "municipal school district" cities which currently are pending in a chancery court or other proceeding (if an annexation or proposed annexation includes an area that was part of the "added territory" of the municipal school district, provide the requested population data separately for the annexed "added territory" and the annexed area that was not in the municipal school district). Include the student population, by race, of each municipal separate school district in the state and each county, consolidated, and consolidated line school district that adjoins a municipal school district.

The Attorney General has sixty days in which to consider a complete submission pursuant to Section 5. This sixty-day review period will begin when this Department receives the information necessary for the proper evaluation of the change you have submitted. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.37(a)). Further, you should be aware that if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. See also 28 C.F.R. 51.40. Therefore, please inform us of the course of action the State of Mississippi plans to take to comply with this request.

In addition, it has come to our attention that a 1977 state act that modifies the procedures for extending municipal school district boundaries has not received the requisite Section 5 clearance. Our records fail to show that Chapter 379 (1977) has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5. As you know, changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See 28 C.F.R. 51.10.

Finally, our review of Section 47 of Chapter 492 suggests that the repeal of code sections other than §37-7-611 occasioned voting changes which have not been submitted for Section 5 review. For example, it repealed §§37-7-605, 37-7-607, and 37-7-609 which established procedures for creating and abolishing municipal separate school districts, and deannexing "added territory" from such districts. Related to the repeal of these code sections was an amendment to §37-7-113 (Section 56 of Chapter 492) which altered the procedures by which school boards may reorganize, abolish, or alter their school districts which our records also show has not been submitted for Section 5 review.

If you have any questions concerning the matters discussed in this letter of if we can aid you in any way to obtain the additional information we have requested, feel free to call Ms. Julie Riley (202-272-6295) of our staff. In addition, to enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to Chapter 379 (1977) and the other matters discussed in the preceding paragraph. Refer to File Nos. T0966 and T3369 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: /s/ Gerald W. Jones
Gerald W. Jones
Chief, Voting Section

APPENDIX K

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL

JIM WARREN
Special Assistant to
the Attorney General

FRANK SPENCER
Assistant Attorney General
Director, Public Advocacy

BEVERLEY D. COLEMAN, CPA
Director, Administration

MIKE MOORE
ATTORNEY
GENERAL

STEPHEN J. KIRCHMAYR
Deputy Attorney General
Litigation

ROBERT L. GIBBS
Deputy Attorney General
State/Local Government,
Opinions

January 27, 1989

Honorable Gerald W. Jones
Chief, Voting Section
Civil Rights Division
P. O. Box 66128
Washington, D.C. 20035-6128

Re: Supplemental Information Requested
Chapter 492, § 47 (1986)
Your File Nos. T0966 and T3369

Dear Mr. Jones:

On July 22, 1986, the State of Mississippi submitted Chapter 492 Laws of 1986 for preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended (42 U.S.C. § 1973(c)). On August 29, 1986, Chapter 492 was precleared under Section 5 as to the particular sections identified in our July 22, 1986 submission.

On December 30, 1987, the State of Mississippi submitted Section 47 of Chapter 492 since Section 47 was not specifically identified in our original submission. On March 2, 1988, we received your letter dated February 29, 1988 requesting additional information to be considered in connection with your review of Section 47. In response to

these requests, the following information is submitted, to-wit:

Request No. 1.

1. A detailed description of the process that resulted in the repeal of §37-7-611. In that regard, we understand that a committee appointed by the State Auditor prepared draft legislation which was the basis for Chapter 492, and that the committee's proposal did not provide for the repeal of § 37-7-611. Identify the specific manner in which the repealer was incorporated into Chapter 492 and, if it was added by an amendment, provide a breakdown of votes, by member, for that amendment. Identify the legislators who were the principal proponents of the repeal and provide daytime telephone numbers at which they may be contacted. Provide copies of any legislative analyses of the meaning and effect of the repealer and all newspaper articles, editorials, and letters to the editor concerning the repeal of §37-7-611.

Response to Request No. 1.

As stated in our submission of Section 47, the obvious reason for this repealer provision is to void any piecemeal legislation dealing with the subject addressed in the uniform school law. Section 47 is simply a house cleaning measure for Chapter 492, most of which has already been precleared by the United States Justice Department. It is error to view the inclusion of the repeal of Section 37-7-611 as an isolated legislative act.

The repeal of Section 37-7-611 and the numerous other code provisions repealed by Section 47 of Chapter 492 were incorporated into the original senate draft of the uniform school law. It was not added by way of amendment. On information from Mr. Robert Davidson, Staff Attorney for the Senate Interim Committee to Study Public School Finance and Administration, who was also a member of the State Auditor's Advisory Committee, the

repeal of Section 37-6-611 was incorporated into the draft of the legislation submitted to the Senate Committee by the Advisory Committee appointed by the state auditor. Attached hereto as Appendix A are various memoranda establishing the Auditor's Committee, listing its members, and outlining its efforts.

Chapter 492, as declared by Section 1 thereof, is known as the "Mississippi Uniform School Law of 1986. The purpose of this legislation is aptly stated in Section 2 of the act, to-wit: "From and after July 1, 1987, all school districts in the State of Mississippi shall have the same prerogatives, powers, duties, and privileges as provided in this act."

In order to accomplish uniformity in the powers, duties and privileges in all school districts, it was necessary to repeal numerous sections of the old education law that were inconsistent with the purpose and provisons of Chapter 492. Accordingly, Sections 44 through 51 of Chapter 492 repealed a total of seventy-two (72) provisions of the old education law. Section 44 repealed eleven (11) sections which prescribed the powers and duties of county boards of education. Section 45 repealed three (3) sections which provided for the organization of boards of trustees of municipal separate and consolidated school districts. Section 46 repealed two (2) sections which provided for the expenditure of school district funds for incidentals and further provided for contracts for attendance and transportation of pupils by municipal separate school districts. Section 47 repealed twenty-three (23) sections which provided for the creation and operation of municipal separate school districts, one of which was Section 37-7-611. Section 48 repealed twelve (12) sections which provided for the operation of special municipal separate school districts. Section 49 repealed six (6) sections which provided for the creation and operation of line consolidated school districts. Finally, Section 51 repealed nine sections which mandated and provided for a reorganization of school dis-

tricts in 1957. The specific code sections repealed by Sections 44 through 51 of Chapter 492 are as follows:

37-5-21	37-7-313	37-7-629	37-7-733	37-7-903
37-5-23	37-7-601	37-7-631	37-7-735	37-7-905
37-5-25	37-7-603	37-7-633	37-7-737	37-7-907
37-5-27	37-7-605	37-7-635	37-7-739	37-7-909
37-5-29	37-7-607	37-7-637	37-7-741	37-7-911
37-5-31	37-7-609	37-7-639	37-7-743	37-7-1
37-5-33	37-7-611	37-7-641	37-7-745	37-7-3
37-5-35	37-7-613	37-7-643	37-7-801	37-7-5
37-5-37	37-7-615	37-7-645	37-7-803	37-7-7
37-5-39	37-7-617	37-7-719	37-7-805	37-7-9
37-5-41	37-7-619	37-7-721	37-7-807	37-7-11
37-7-231	37-7-621	37-7-727	37-7-809	37-7-13
37-7-233	37-7-623	37-7-729	37-7-811	37-7-15
37-7-235	37-7-625	37-7-731	37-7-901	37-7-17
37-7-309	37-7-627			

As previously stated, the repeal of Section 37-7-611 cannot properly be viewed as an isolated legislative act as your several requests suggest. It was repealed together with a host of other laws for the purpose of placing all school districts on an equal footing, so that after July 1, 1987 all school districts in the state would have the same prerogatives powers, duties and privileges as mandated by Section 2 of Chapter 492. In this context, it should be noted that the sponsors of Chapter 492 sponsored the bill in its entirety and cannot be singled out as "principal proponents of the repeal of Section 37-7-611." The sponsors of Chapter 492 were as follows: Senators Jack Gordon, Irb Benjamin, Rob Smith, Alan Heflin and Cy Rosenblatt. The Mississippi Legislature is currently in session and these senators can be reached during the day at (601) 359-3770. The members of the Mississippi House of Representatives Education Committee who were instrumental in the passage of the Uniform School Act were as follows: "Representatives Robert Clark, Rick Fortenberry, Horace Buckley, Billy McCoy, Thomas Walman, and Jerry

Wilkerson. These representatives can also be reached at the above phone number.

Request No. 2.

A detailed explanation of the reasons for the repeal of §37-7-611, and identify the sources of your information as to the reasons for the repeal. Indicate whether the repeal was related to any particular pending or planned annexations by municipalities which have municipal separate school districts. We note that you have indicated that the reason for repealing §37-7-611 was that it was "piecemeal legislation" concerning the method by which school district boundaries may be altered. However, it has been alleged that there are special circumstances which justify the provision in §37-7-611 that when a municipality with a municipal separate school district annexes territory located in an adjacent school district the boundaries of the municipal school district also are automatically extended into the adjacent district. Once such special circumstance may be that the persons annexed into the municipality thereby become eligible to vote for the municipal governing body which in turn appoints the members of the municipal school district's board of trustees. Indicate the extent to which this circumstance was considered in determining that §37-7-611 should be repealed. It also would be helpful if you would provide information as to the legislative history of § 37-7-611 and the reasons for its adoption.

Response to Request No. 2

The Attorney General's Office has contacted legislators, legislative staff, education officials and school board attorneys[1] as to the reason for the repeal of Section 37-

[1] School officials and attorneys for Hattiesburg Public School District, Western Line Consolidated, Greenville Municipal, Harrison County, Biloxi and Gulfport schools and municipalities have filed written statements with your office expressing their views regarding the repeal of Section 37-7-611.

7-611. Other than one suggestion that the repeal of Section 37-7-611 was mistakenly incorporated into Chapter 492, the general view held is that the repeal of this section and the seventy one (71) other code sections were consistent with the legislative purpose to create uniformity among the various types of school districts by granting all districts the same prerogative powers, duties and privileges. The repeal of Section 37-7-611 was not considered separately but rather was considered together with the repeal of all the provisions listed in response to Request No. 1 which concerned the creation and operation of the various types of school districts existing under the prior education law. The *Report of the Senate Interim Committee to Study Public School Finance and Administration in Mississippi* contains the following statement:

> "Mississippi schools currently operate under four different kinds of school districts—eight if you count the sub-categories—each with its own system of government and finance. In addition to municipal separate districts, the state now has special municipal separate, consolidated and countywide school districts. These types of districts were the result of the Special Session of the Legislature in 1953 which reduced more than 2,000 Mississippi school districts to 151 school districts, and were considered necessary at that time. Several types of districts in existence today are still serving well but there are flaws in each. *It appears that if there were only one type of district so that all of the laws pertaining to districts would apply to each district in the state, rather than special laws for special types of districts, the administration and operation of school districts would be more effective and beneficial to the state.*" (Emphasis added)

Excerpts of the *Report of the Senate Interim Committee to Study Public School Finance and Administration in Mississippi* are attached hereto as Appendix B.

The repeal of Section 37-7-611 and the seventy-one (71) other "special laws for special types of districts "were considered essential to effectuating the purpose of Chapter 492. It does not appear that consideration was given to any special circumstances that may have justified leaving the provisions of Section 37-7-611 in tact. It was apparently felt that the provisions of Section 52 of Chapter 492 authorizing school districts to abolish or reorganize such districts or change or alter the boundaries of any school district would still allow school districts the option to expand and at the same time extend to all school districts the same privileges.

Section 37-7-611 was first enacted at the 1953 Extraordinary Session of 1953 as Chapter 23 §6. It was revised by Chapter 29, §1, 1959 Extraordinary Session. The 1959 amendment did not change the relevant language of Section 37-7-611. Copies of these chapter laws are attached as Appendix C. Similar annexation provisions existed under earlier Mississippi Codes, e.g., see Chapter 315, § 1 of 1926 Laws, a copy of which is included in Appendix C.

Request No. 3.

Identify the minority legislators or minority citizens who specifically were consulted regarding the inclusion of this repealer in Chapter 492 and summarize the comments they provided. If no minority legislators or citizens were consulted, explain the reasons for this omission.

Response to No. 3.

Like Request Nos. 1 and 2 above, this request presupposes that the repeal of Section 37-7-611 was given separate and individual consideration and that it was viewed as something other than a house cleaning measure. Several minority legislators were instrumental in the passage of

Chapter 492. Two in particular were Representative Robert Clark and Representative Horace Buckley. They can be reached during the day at (601) 359-3770.

Request No. 4.

It has been alleged that annexations by municipalities which have municipal separate school districts generally are of predominantly white residential areas, and that the repeal of § 37-7-611's automatic boundary extension provision will permit municipal annexation of these areas and, at the same time, allow those whites to remain in predominantly white school districts that adjoin predominantly black municipal school districts. Please provide us with whatever information the state has which may be enlightening on this issue. In particular, include information on the population, by race, of any annexations proposed by "municipal school district" cities which currently are pending in a chancery court or other proceeding (if an annexation of proposed annexation includes an area that was part of the "added territory" of the municipal school district, provide the requested population data separately for the annexed "added territory" and the annexed area that was not in the municipal school district). Include the student population, by race, of each municipal separate school district in the state and each county, consolidated, and consolidated line school district that adjoins a municipal school district.

Response to Request No. 4.

The State of Mississippi does not maintain a centralized system for the reporting of municipal annexations. The U. S. Department of Justice is the only agency to our knowledge that maintains these records.

While the data sought by this request may be a permissible inquiry in the context of examining any alleged discriminatory purpose underlying the repeal of Section 37-7-611, which we submit cannot exist in this case, the

data sought, i.e. the racial composition of school population is totally irrellevant to a Section 5 inquiry.

Additionally, in view of the Section 5 preclearence requirements with respect to municipal annexations, and in light of the establishment of single member education 523 of the 1988 Laws of Mississippi, we cannot see how the repeal of Section 37-7-611 can operate so as to impermissibly dilute or restrict minority voting rights. It is noted that the *Joint Resolution Memorializing the Repeal of Section 37-7-611, Miss. Code of 1972, as amended, for Preclearance by the United States Department of Justice*, filed with your office by officials of Harrison County, Biloxi and Gulfport School Districts, as well as the officials of the cities of Gulfport and Biloxi, express the view in its accompanying cover letter that if Section 37-7-611 were to be enforced in their area, it would operate to dilute minority voting strength in the election of the members to the Harrison County School Board.

If you have any questions about this response, please contact the undersigned at (601) 359-3839, Also, Mr. Robert Davidson, who was Staff Attorney for the Senate Interim Committee to Study Public School Finance and Administration, is very familiar with the legislative history of the Uniform School Law and he can be reached at (601) 359-3217.

Sincerely,

/s/ Giles W. Bryant
Giles W. Bryant
Special Assistant Attorney General

/jw

APPENDIX L

[SEAL]

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 31, 1989

Honorable Mike Moore
Attorney General
P.O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Section 47 of Chapter 492 (1986) of the State of Mississippi insofar as it repeals Section 37-7-611 of the Mississippi Code, dealing with the modification of municipal school district boundaries. We received the information to complete your submission on January 30, 1989.

We have carefully considered the information you have provided along with the comments and information received from other interested parties. As a result of our review, a number of factors emerge as being very significant to the determination the Attorney General is called upon to make in a situation of this nature.

First, Section 37-7-611 provides that when a municipality with a municipal school district annexes land that is not in the municipal school district, the boundary between the municipal school district and adjoining school districts

shall be modified to accord with the newly established municipal boundaries. Under that system, Mississippi currently has in place a mechanism whereby all political boundary disputes relating to a proposed annexation, whether they concern school or other matters, may be aired and considered in a proceeding conducted by the chancery court to determine whether the annexation should be approved.

Secondly, it appears that the state, by repealing Section 37-7-611, proposes to replace this judicial, case-by-case approach to reviewing annexations as they relate to municipal school districts with a system in which the neighboring school district can, and apparently often will, exercise veto authority over such a municipal school district annexation.

Thirdly, according to our information it is generally recognized in the state that there is a demographic trend toward the movement of whites out of the cities into suburban and rural areas while blacks are moving from the rural areas of the state into the cities. It further appears that this demographic trend may play a significant role in the opposition to annexations by school districts that neighbor a municipal district since we have noted specific recent annexation disputes where a principal issue has been opposition by predominantly white areas to transferring their students into a majority black school system.

While we recognize that demographic patterns are not uniform throughout the state, demographic data available to us suggest that the repeal of Section 37-7-611 will have a significant racial impact. According to information published by the State Department of Education, approximately half the municipal school districts in the State of Mississippi have a student population that is majority black and about two-thirds are 40 percent black or higher. Thus, with the repeal of Section 37-7-611, the long term effect appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will

essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner.

Finally, we note that the repeal of Section 37-7-611, by allowing for annexations to cities without the concomitant expansion of municipal school district boundaries, is likely to create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board. We have received no explanation for the establishment of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia* v. *United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. That is especially so here, since a covered jurisdiction may not seek to establish or revise political boundary lines so as to include some voters in the jurisdiction and fence others out based on race. *Perkins* v. *Matthews*, 400 U.S. 379 (1971); *accord, City of Pleasant Grove* v. *United States*, 623 F. Supp. 782 (D.D.C. 1985), *aff'd*, 479 U.S. 462 (1987). Therefore, on behalf of the Attorney General, I must object to the repeal of Section 37-7-611.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of

Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the repeal of Section 37-7-611 legally unenforceable. 28 C.F.R. 51.10.

In addition, we wish to again bring to your attention the fact that Chapter 379 (1977), which occasioned a similar change concerning the modification of municipal school district boundaries where a municipality annexes territory outside its principal county, has not received the requisite Section 5 clearance. Accordingly, unless and until the State of Mississippi receives a declaratory judgment from the District of Columbia Court or the Attorney General grants clearance, this change also is not legally enforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

/s/ James P. Turner

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

APPENDIX M

STATE OF MISSISSIPPI
[SEAL]
OFFICE OF THE ATTORNEY GENERAL
TELEFAX NUMBER (601) 359-3796
CARROLL GARTIN JUSTICE BUILDING
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680

MIKE MOORE
ATTORNEY GENERAL

January 12, 1990

Mr. Barry Weinberg
Acting Chief, Voting Section
Civil Rights Division
Post Office Box 66128
Washington, D. C. 20035-6128

RE: REQUEST FOR RECONSIDERATION OF THE LIMITED PRECLEARANCE OF CHAPTER 492 (1986), OR ALTERNATIVELY, FOR RECONSIDERATION OF OBJECTION TO REPEAL OF SECTION 37-7-611, MISS. CODE OF 1972, BY CHAPTER 492, § 47 (1986)

Dear Mr. Weinberg:

Please find enclosed the above-referenced request for reconsideration in accordance with 28 C.F.R. §51.45. As set forth herein, we also request a conference as authorized by 28 C.F.R. §51.47(a).

Sincerely,

Mike Moore, Attorney General

By: /s/ Giles W. Bryant
Giles W. Bryant
Special Assistant Attorney General

jw
Enclosures

REQUEST FOR RECONSIDERATION UNDER 28 C.F.R. § 51.45

TO: THE ATTORNEY GENERAL OF THE UNITED STATES, HONORABLE RICHARD THORNBURG

REQUEST FOR RECONSIDERATION OF THE LIMITED PRECLEARANCE OF CHAPTER 492 (1986), OR ALTERNATIVELY, FOR RECONSIDERATION OF OBJECTION TO REPEAL OF SECTION 37-7-611, MISS. CODE OF 1972, BY CHAPTER 492, § 47 (1986)

In accordance with 28 C.F.R. § 51.45 and the Voting Rights Act of 1965, 42 U.S.C. § 1973c, the Attorney General of the State of Mississippi, on behalf of the State of Mississippi, hereby requests the Attorney General of the United States to reconsider the limited preclearance of Chapter 492 (1986) rendered on August 29, 1986, or alternatively, to reconsider the March 31, 1989 objection to Chapter 492, § 47 (1986) insofar as it repeals Section 37-7-611, Miss. Code of 1972.

I.

REQUEST FOR CONFERENCE IN ACCORDANCE WITH 28 C.F.R. § 51.47

The Attorney General of the State of Mississippi also requests a conference as authorized by 28 C.F.R. § 51.47(a) in connection with this request for reconsideration, such conference to be held at a place and time to be determined by the Attorney General of the United States in accordance with 28 C.F.R. § 51.47(b).

II.

SUMMARY OF ARGUMENT IN SUPPORT OF RECONSIDERATION

Chapter 492 (1986) was submitted in its entirety on December 30, 1986, together with a comparative analysis

of each section of that law. The submission satisfied the requirements of 28 C.F.R. § 51.27. There was no authority for the Attorney General to grant only limited preclearance. Accordingly, the Attorney General should reconsider this limited preclearance and preclear the law as submitted—in its entirety.

The repeal of Section 37-7-611 was based on the legislative finding that public educational opportunities available to students residing in rural areas of Mississippi were substandard to those offered to students residing in urban areas. The purpose underlying the repeal of Section 37-7-611 was to protect the ad valorem tax base available to county school systems in the path of municipal expansions. The repeal of Section 37-7-611 was an educational policy decision totally unrelated to voting rights considerations, and the Attorney General's objection to this law completely frustrates the State of Mississippi's efforts to offer better educational opportunities to its students attending county and consolidated school systems.

Finally, the real basis of the Attorney General of the United States' March 31, 1989 objection to the repeal of Section 37-7-611, Mississippi Code of 1972, is its purported effect on school enrollment population and not its effect on voting population or any other voting concerns. The demographic trends relied on in the March 31, 1989 objection letter are erroneous. Most importantly, even if these demographic trends were present in Mississippi, the repeal of Section 37-7-611 can only impact one type of school election i.e., school bond issue elections, and the repeal of Section 37-7-611 simply cannot operate to minimize black voting strength in such elections.

III.

SECTION 37-7-611 AND ITS SUBMISSION HISTORY

Section 37-7-611, Mississippi Code of 1972, provided that whenever a municipality annexed adjoining territory which

included any part of an existing adjacent school district, then that part of the adjacent school district automatically merged with the municipalities' municipal separate school district. The actual language of Section 37-7-611 provided in part as follows:

> **§ 37-7-611 Merging of Adjacent School Districts:**
>
> "Where the corporate limits of any municipality which constitutes a municipal separate school district, either with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district.

The remaining provisions of Section 37-7-611 pertained to annexations that take effect after September 1 of any fiscal year of the adjacent school district; and also pertained to the effect of annexations that include or exclude school buildings, and to related matters.

Section 37-7-611 was repealed in 1986 by Section 47 of Chapter 492, 1986 Laws of Mississippi. Chapter 492, otherwise referred to as the Uniform School Law of 1986, was submitted for preclearance under Section 5 of the voting Rights Act of 1965 on July 22, 1986. Attached hereto as Appendix "A" is a copy of the state's submission statement (without exhibits). Thirteen sections of Chapter 492 were specifically outlined in the state's submission. (i.e., Sections 9, 25, 52, 53, 54, 55, 56, 153, 163, 164, 170,

185 and Section 203.) The submission statement at page 2 thereof contained the following language, "for the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review." Chapter 492 (1986) was submitted in its entirety.

Most importantly, a loose-leaf notebook entitled **"Senate Bill Number 2117—Comparison of Current Law and New Law"** was attached to the submission statement as Exhibit "C" thereof. Due to its length, this comparative analysis is not included with this request for reconsideration. However, it was part of the original submission of Chapter 492 and should be on file in the United States Department of Justice. Also, it will be produced at any conference set by the Attorney General in connection with the instant request.

On August 29, 1986, the Attorney General of the United States precleared Chapter 492 as to those sections specified in the state's submission statement. A copy of this preclearance letter is attached hereto as Appendix "B".

Due to the uncertainty surrounding the Section 5 status of other sections of Chapter 492 and since the Section 5 status of certain sections of Chapter 492 was raised in *Kirksey, et al v. Pittman*, U.S.D.C. (S.D. Miss.), Civil Action No. J86-558(B), the State of Mississippi on April 30, 1987 submitted for Section 5 preclearance Sections 60 and 84 of Chapter 482 (1986), which were precleared on July 9, 1987. On December 30, 1987, the state submitted for Section 5 preclearance, Section 47 of Chapter 492 (1986), insofar as it repealed Section 37-7-611. The state's submission statement (without exhibits) is attached hereto as Appendix "C". On February 29, 1988, the State of Mississippi was advised that the information submitted in support of the preclearance of the repeal of Section 37-7-611 was insufficient and additional information was requested. The February 29, 1988 letter requesting additional information is attached hereto as Appendix "D".

Due to a change in personnel and intervening statewide elections, together with the usual extensiveness of the request for additional information, the state was not able to provide the requested information until January 27, 1989. A copy of the state's response is attached hereto as Appendix "E". On March 31, 1989, the Attorney General of the United States objected to the implementation of Section 47 of Chapter 492 (1986) insofar as it repealed Section 37-7-611. Since this letter forms the basis of this request, it is set out in substantial part as follows without indentation, to-wit:

* * *

[See Appendix L, pp. 139a-142a]

* * *

IV.

ARGUMENT

IV(A).

THE ATTORNEY GENERAL OF THE UNITED STATES HAS NO AUTHORITY UNDER 28 C.F.R., PART 51 TO GRANT ONLY LIMITED PRECLEARANCE TO A LAW THAT IS SUBMITTED IN ITS ENTIRETY

The state's submission of Chapter 492 clearly specified that it was being made in its entirety. Included with the submission was a detailed comparison of the "current and new law." Each section of Chapter 492 was properly explained. With respect to Section 47, even though the repealed sections were not set out, they were sufficiently described as providing for the creation and operation of municipal separate school districts.

The federal regulations implementing 42 U.S.C. § 1973c provide that if the Attorney General fails to make a written response within the sixty (60) day review period that such failure constitutes preclearance of the submitted

change (28 C.F.R. § 51.42). There was no written response as to any sections of Chapter 492 except for those specified in the state's submission statement.

Without question, covered jurisdictions have the burden of proof in submitting election changes for preclearance under Section 5, 28 C.F.R. § 51.52, *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), *McCain v. Lylrand*, 465 U.S. 236 (1984). In *McCain v. Lylrand*, the Supreme Court stated:

> "When a jurisdiction adopts legislation that makes clearly defined changes in its election practices sending that legislation to the Attorney General merely with a general request for preclearance pursuant to § 5 constitutes a submission of the changes made by the enactment . . . " 465 U.S. at 256.

In submitting Chapter 492 (1986), the state clearly submitted it in its entirety and included with the submission a comparative analysis of each section. Its submission clearly satisfied 28 C.F.R. § 51.27 as it existed in 1986 at the time of submission. There was no requirement at that time that a copy of the document setting forth the voting practice to be replaced be provided as is now required by 28 C.F.R. 51.27(b). If the Attorney General determined that the state's submission was insufficient or incomplete, he should have requested additional information in accordance with 28 C.F.R. § 51.37. There was simply no authority at the time of this submission to grant limited preclearance in the face of a law submitted in its entirety. Accordingly, Chapter 492 (1986) should have been precleared in its entirety on August 29, 1986, and the State of Mississippi hereby requests that the Attorney General of the United States reconsider its limited preclearance of Chapter 492 and preclear this law as submitted—in its entirety.

136, 148 (1967). The statutes in issue have been passed by the Mississippi Legislature and are being enforced. The case is ripe for decision.

5.

We must also consider what effect, if any, to give the Mississippi Supreme Court's thorough and well reasoned decision in *Greenville Public School District*. We agree with the Mississippi Supreme Court that it has concurrent jurisdiction to adjudicate certain § 5 issues. *Tafflin v. Levitt*, __ U.S. __, 110 S.Ct. 792 (1990). State courts have jurisdiction to hear federal claims unless divested "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Id.* at 795 (quoting *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981). In *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982), the Supreme Court held "that the Mississippi courts had the power to decide whether § 5 applied to the change...."

> Congress prohibited...jurisdictions from implementing any change in voting procedure without obtaining preclearance under § 5. Granting state courts the power to decide, as a collateral matter, whether § 5 applies to contemplated changes in election procedures will help insure compliance with the preclearance scheme.

Id. at 268.

However, the effect federal courts give to state court determinations of federal claims is a separate inquiry from that of concurrent jurisdiction. In short, federal courts

are not bound by state court decisions on matters of federal law. *See, e.g., Standard Oil Co. v. Johnson*, 316 U.S. 481, 483 (1942); *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 470-71 (1942) (Jackson. J., concurring). Therefore, the state court's interpretation of the § 5 preclearance issues is not binding on this court. Furthermore, the doctrines of res judicata and collateral estoppel are inapplicable, because the plaintiffs and the defendants were not parties to the state court action. *See Hathorn v. Lovorn*, 457 U.S. at 268 n.23 ("Common notions of collateral estoppel suggest that the state proceedings... would not bind other interested persons who did not participate in them...Persons dissatisfied with a state court's collateral resolution of a § 5 issue in proceedings involving other parties, therefore, are likely to be able to litigate the issue anew in federal court."). Moreover, § 21-1-59 was not in issue in *Greenville Public School District*.

Conversely, a state supreme court's interpretation of a state statute is binding on a federal court. *See Wainwright v. Goode*, 464 U.S. 78, 84 (1983) ("the views of the State's highest court with respect to state law are binding on the federal courts"); Brown v. Ohio, 432 U.S. 161, 167 (1977) ("Ohio courts 'have the final authority to interpret...that State's legislation.'") (quotation omitted). Accordingly, the Mississippi State Court's interpretation of the Uniform School Law is binding on this court.

B.

The primary issues involved in this case have been summarized by the Supreme Court as follows:

> The only questions in an action alleging a violation of the § 5 preclearance requirement are (1) whether a change is covered by § 5, (2) if the

> change is covered, whether § 5's approval requirements have been satisfied, and (3) if the requirements have not been satisfied, what relief is appropriate.

McCain v. Lybrand, 465 U.S. 236, 250 n. 17 (1984). Whether the amendments and repealer "had a discriminatory purpose or effect is not an issue at this stage of the § 5 litigation: that question must be initially decided by the District Court for the District of Columbia or the Attorney General." *Id.*

1.

First, we must address plaintiffs' contention that the USAG's determinations that the statutes are covered by § 5 and have not been precleared are not subject to review by this court. The Supreme Court has held that only the USAG's "exercise of discretion...or his failure to object within the statutory period" is unreviewable. *Morris v. Gressette*, 432 U.S. 491, 500-07 (1977). In *Morris*, the Court invalidated an untimely *nunc pro tunc* objection by the USAG to a South Carolina reapportionment plan. The USAG had failed to enter a timely objection to the submission. "[C]ompliance with § 5 is measured solely by the *absence*, for whatever reason of a timely objection on the part of the Attorney General." *Id.* at 502 (emphasis in original). Although the USAG's decision not to object is not reviewable, this does not preclude a consideration of whether the statutes in issue are covered by § 5 and were precleared, especially where, as here, that was arguable preclearance of the entire Uniform School Law on the first submission (1986).

2.

Whether these statues are covered by § 5 is a legal question and therefore appropriate for summary judgment. The scope of § 5 is broad. It is intended to reach "any state enactment which altered the election law of a covered State in even a minor way." *Allen*, 393 U.S. at 566. There are no statutory exceptions to § 5, "thus indicating an intention that all changes, no matter how small, be subjected to § 5 scrutiny." *Perkins v. Matthews*, 400 U.S. 379, 387 (1971) (quoting *Allen*, 393 U. S. at 568). The regulations in effect in 1986 when the Uniform School Law was submitted for preclearance provided:

> Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused the objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

28 C.F.R. § 51.11 (1986) (currently codified at 28 C.F.R. § 51.12 (1999)).

The statutes in issue, at the very least, indirectly affect political subdivision boundaries. The regulations list examples of changes affecting voting; one is "[a]ny change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment...)." 28 C.F.R. § 51.12 (1986) (currently codified at 28 C.F.R. § 51.13 (1990)). The trustees of a municipal separate school district in general are elected "by a majority of the governing authorities of the municipality...." Miss. Code Ann. § 37-7-203 (1972); Hattiesburg Code of Ordinances, Art. XXII, School Board (1989). The governing authorities of

the City, the mayor and council, are "elected from the municipality at large in accordance with the general laws for the holding of municipal elections." Hattiesburg Code of Ordinances, Art. I, §§ 2-2 and 2-4 (1989). Those residing in the annexed areas may vote in municipal elections if a proper ordinance is adopted by the council. Miss. Code Ann. § 21-8-7(4)(d) (1972).

Prior to the 1977 and 1978 amendments to § 21-1-59 and the 1986 repeal of § 37-7-611, municipal school district lines expanded to the same extent as the municipal annexations; now, under § 37-7-103, and the amendments to § 21-1-59, this result is not automatic. Here, the result is that citizens who reside in the Lamar and Forrest County annexations may still be in the county school districts. These citizens continue to vote for the Lamar and Forrest County Boards of Education; but they also vote for the City mayor and council, who in turn select the City board of trustees of the City school district. Therefore, at least an indirect change in voting has occurred.

Furthermore, it is significant that the USAG, who has considerable expertise in this area, considered these statutes to be "changes" within the meaning of § 5. In his March 31, 1989 objection to the repeal of § 37-7-611, he stated:

> [T]he repeal of Section 37-7-611, by allowing for annexations to cities without the concomitant expansion of municipal school district boundaries, is likely to create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body, which under Mississippi law, appoints the city school board.

And, in that same letter, he also found that the 1977 amendment to § 21-1-59 "occasioned a similar change concerning the modification of municipal school district boundaries where a municipality annexes territory outside its principal county." *See Dougherty County, Ga. Bd. of Educ. v. White*, 439 U.S. 32, 39 (1978) ("Given the central role of the Attorney General in formulating and implementing § 5, [his] interpretation of its scope is entitled to particular deference."); *Lucas v. Townsend*, 698 F. Supp. 909, 911 (M.D.Ga. 1988) ("Though not binding upon this...court, the Attorney General's interpretation of both the scope of Section 5 and his regulations promulgated thereunder is entitled to particular deference.").

Accordingly, we hold that the statutes do fall within the broad sweep of § 5. The vote from the annexed area could have an impact on the selection of the City school board. The vote of the City voters who reside in the municipal school district would be diluted by the vote of those residents in the annexed area who remain a part of the county school district. This constitutes the requisite change in voting.

3.

We next determine whether these statutes have been precleared. As stated, in 1986 the Uniform School Law was submitted to the USAG "in its entirety" and no objection was interposed within the statutory 60 day period. The regulations then in effect did not require jurisdictions to submit a copy of the prior law being

amended or repealed. 28 C.F.R. § 51.25 (1986).[5]

The regulations in effect in 1986 did require the submitting authority to include "a clear explanation of the change explaining the difference between the submitted change and the prior law or practice" if the change affecting voting was not readily apparent on the face of the document. 28 C.F.R. § 51.25(b)(1986). Those regulations also imposed a duty on the USAG to request additional information if the submission was incomplete:

> If a submission does not satisfy the requirements of § 51.25, the Attorney General shall request further information as is necessary from the submitting authority....

28 C.F.R. § 51.35 (1986). The USAG did not make such a request.

As discussed *supra*, the State explained that the Uniform School Bill was submitted in its entirety and was a reorganization and streamlining of the Mississippi school system. The plaintiffs contend that only those provisions which were specifically identified in the cover memorandum were precleared, asserting that the USAG's August 1986, letter which states that there was no objection to the voting changes "as identified in your July 22, 1986 letter" indicates that the USAG precleared only those particular sections. Moreover, the subsequent May 1990 USAG letter stated:

> It is well-established that to trigger § 5 review a

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[5] The current regulation requires "[a] copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed." 28 C.F.R. § 51.27 (1990).

> covered jurisdiction must submit a voting change to the Attorney General in a "unambiguous and recordable manner."...[T]he prior submission of the Uniform School Law...identified specific voting changes adopted...but...[the] submission contained [no] reference to the voting changes which the state now claims were precleared.

The letter further stated that the responsibility is on the submitting jurisdiction to identify voting changes, and that the USAG should not be required to uncover "voting changes of which the state itself seemingly was unaware at the time the prior submissions were made."

The plaintiffs also charge the state defendants with being inconsistent, because their statement that they submitted the entire bill for preclearance is in contradiction to the December 30, 1987, letter of resubmission, in which the MAG stated that "[t]he *major part* of Chapter 492, as it deals with the Voting Rights Act of 1965...has already been precleared" by the Justice Department on August 19, 1986. (Emphasis added.)

The defendants and intervenors respond that the bill was submitted in its entirety, and furthermore, that the booklet accompanying the submission explained that § 47 repealed those sections (including 37-7-611) governing the creation and operation of municipal school districts. They maintain that the entire bill was precleared by the USAG's failure to object, and that subsequent objection in 1989 and 1990 was of no effect.

In *Morris,* the Court held that the USAG's belated attempt to object to South Carolina's reapportionment plan was invalid:

> According to the terms of § 5, a covered jurisdiction is in compliance pursuant to the latter

> alternative [USAG method] once it has (i) filed a complete submission with the Attorney General, and (ii) received no objection within 60 days. ...[C]ompliance with § 5 is measured solely by the *absence,* for whatever reason of a timely objection on the part of the Attorney General.

432 U.S. at 502 (emphasis in original). The Court further stated that

> [i]n light of the potential severity of the § 5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions....the extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission.

Id. at 504. And, the Court noted that the USAG's failure to act would not preclude a subsequent action to enjoin enforcement of the legislation.

Morris stands for the proposition that the USAG's failure to object to a complete submission is final, and any subsequent attempts to object are invalid. Needless to say, the question remaining after *Morris* is what constitutes a "complete submission." In *Allen,* which preceded *Morris,* none of the voting changes were formally submitted to the USAG; but the appellees contended that the USAG was aware of the changes when served with a copy of appellees' briefs in the four consolidated cases. The Supreme Court rejected this argument and held:

> While the Attorney General has not required any formal procedure, we do not think the Act contemplates that a "submission" occurs when the Attorney General merely becomes aware of the legislation, no matter in what manner....A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.

393 U..S. at 571.

In *United States v. Board of Comm'rs of Sheffield, Ala.*, 435 U. S. 110 (1978), the city submitted a letter which "sought approval only for the holding of a referendum," but did not ask for preclearance of the underlying change that was the subject of the referendum. When the USAG responded, he stated that he interposed no object to the holding of a referendum. The Supreme Court held that the district court erred in concluding that the USAG approved the underlying change as well. "[T]he purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." *Id.* at 136.

McCain v. Lybrand, 465 U.S. 236 (1984), concerned a 1966 bill that had never been submitted for preclearance, although a 1971 amendment to the 1977 bill had been precleared. The district court held that (1) the USAG's request for additional information, including a copy of the 1966 statute, indicated that he had considered all aspects of the electoral scheme, including the changes effected in the 1966 Act; or (2) alternatively, that because the 1971 submission retained the changes, the lack of objection to the 1971 submission necessarily constituted approval of

those changes as well and rendered moot the failure to preclear the 1966 Act. The Supreme Court disagreed:

> To the extent there was ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such ambiguities in favor of the submitting jurisdiction in the circumstances of this case. The preclearance process is by design a stringent one; it is predicated on the congressional finding that there is a risk that covered jurisdictions may attempt to circumvent the protections afforded by the Act; the burden of proof...is placed upon the covered jurisdiction...

Id. at 257.

Allen, Sheffield, and *McCain,* however, are factually distinguishable from this case. The MAG unambiguously submitted the Uniform School Law "in its entirety." The USAG was advised that only particular sections which dealt "primarily" with voting rights were discussed, "even though the complete act is submitted for review." The memorandum explained the comprehensive nature of the submission; and, most importantly, the booklet explained the repeal of § 37-7-611 governing the creation and operation of municipal school districts.

Of even greater significance is both the discussion of § 52 in the cover memorandum and booklet and the undisputed preclearance of that section. Section 52, § 37-7-103, was in effect a replacement for the school districting procedures. Prior to the Uniform School Law, the provisions pertaining to school district boundaries and

alterations varied, depending on whether the district was a county, municipal or consolidated school district. The 1986 Uniform School Law created uniformity among the school districts.[6] Section 52 amended § 37-7-103 (which had concerned changes to school districts by a county board of education) by granting jurisdiction to the school board of any school district to alter the boundaries of any such district by obtaining the consent of the adjoining school district involved; and the school board was authorized "to detach or add to such school district any part of the school district adjoining same, and...may detach territory from such school distinct and annex same to an adjoining district." All references to a county board of education and its authority to alter districts in the county were deleted; all references to a municipal school district and its required consent were deleted.

This view is in accord with the Mississippi Supreme Court's analysis of § 37-7-103:

> Miss. Code Ann. § 37-7-103...was enacted to

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[6] Section 37-6-5 was added by § 2 of the Uniform School Law. It provides in part:

> (1) From and after July 1, 1987, all school districts in the State of Mississippi shall have the same prerogatives, powers, duties and privileges as provided in this chapter.
> (2) As used in this act, the term "school board"shall mean (a) the county board of education of any countywide school district in this state; and (b) the board of trustees of any municipal separate, special municipal separate, consolidated or line consolidated school district in this state.

Section 37-6-5 was added by § 3:

> Each school district in the state shall be a political subdivision with the name of the district being "_____ School District."

Section 37-6-7 was added by § 4:

> Each school district shall be governed by a school board consisting of five (5) members, selected in the manner provided by law.

> control the abolition, alteration or creation of school districts after the reform. This statute gives the school board of any school district full jurisdiction, power and authority to alter the mutual consent of adjoining districts in the alteration of abutting boundaries. *All conflicting statutes concerning school boundaries were repealed, including § 37-7-611.*

Greenville Public School District, No. 07-CA-59534 at 3 (Dec. 12, 1990) (emphasis added).

This case is factually similar to *Woods v. Hamilton,* 473 F. Supp. 641 (D.S.C. 1979) (three-judge court). In *Woods,* South Carolina submitted the 1975 Home Rule Act for § 5 approval. The cover letter which accompanied the submission stated in full:

> For your consideration under the Voting Rights Act submitted herewith are certified copies of the following Act enacted by the General Assembly and approved by the Governor.
>
> | Ratification Number | Date Approved |
> |---|---|
> | R. 396 | June 25, 1978 |
>
> We would request expeditious consideration of this Act. If additional information is needed, please contact me.

Id. at 644. The court stated that "[i]t is apparent from the above letter that the State submitted the *entire* Home Rule Act to the [USAG] for his consideration within the sixty-day statutory period." *Id.* (Emphasis in original.) The USAG responded and (1) did not expressly object to

a referendum provision; (2) reserved the right to object to the implementation of the selected form of government pursuant to the referendum; and (3) was silent on a transfer of powers provision. The court held that *Morris* compelled a finding that the USAG had precleared the complete submission:

> Here, the Attorney General's silence on the transfer of powers in the Home Rule Act clearly dooms his belated attempt to label the assumption of such powers by the county council as an "uncleared change." Whatever may have been the motive of the Attorney General in failing to object to their transfer of powers in his...letter, the fact remains that the State submitted the entire Home Rule Act and, under the law, the Attorney General...was required to pass on all components of a complete submission at that time. *Id.* at 646.

We find that there are no genuine issues of material fact concerning the preclearance, *vel non*, of the entire Uniform School Law of 1986 and hold that it was precleared in its entirety, including the repeal of § 37-7-611. A uniform act was submitted; by its title alone, the act signalled a massive reorganization of various laws. The submission was complete and unambiguous. And, under *Morris*, the USAG's later objection was of no effect.[7] Accordingly, the defendants and intervenors are entitled to summary judgment on plaintiffs' claim that the repeal of § 37-7-611 is not enforceable.

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[7] Because we find that the submission was complete, we need not decide whether § 37-7-611 was precleared by implication, due to the undisputed preclearance of § 37-7-103.

Likewise, as for § 21-1-59, there are no genuine issues of material fact concerning the preclearance, *vel non,* of the 1977 amendment. The 1977 amendment has not been precleared. The amendment was not submitted until March 23, 1990; and the USAG interposed an objection. The defendants' argument that the approval of the 1978 amendment cured the failure to submit the 1977 amendment for preclearance is without merit. This argument has been specifically rejected by Supreme Court decisions in *McCain* and *Sheffield,* discussed *supra.*

The only provision of the 1978 amendment to § 21-1-59 which was precleared was the referendum provision and not the "extends into or further extends" language now in issue. The MAG's December 30, 1980, cover letter stated that "[f]rom the wording of the language as amended it appears that this amendment would apply only to Jones County." This language pertains to the referendum provision. The Attorney General's March 1981 response is clear:

> This is in reference to House Bill No. 1092...which provides for a referendum for municipalities in certain counties to determine whether a municipal expansion shall affect the public school system in the annexed area....The Attorney General does not interpose any objection to the change in question.

The USAG response is limited to the referendum issue and that is the only provision which was precleared.

We hold, therefore, that the 1977 and 1978 amendments in issue to § 21-1-59 have not been precleared. Accordingly, these amendments are unenforceable. Therefore, the plaintiffs are entitled to summary judgment on their claim that the 1977 and 1978 amendments in

issue to § 21-1-59 are not enforceable.[8]

THEREFORE, IT IS ORDERED:

1. Ray Mabus, the Governor of Mississippi, is dismissed from this action;

2. Summary Judgment is awarded plaintiffs on their claim that the 1977 and 1978 amendments in issue to § 21-1-59 are not enforceable; and

3. Summary judgment is awarded the defendants and intervenors on plaintiffs' claim that the repeal of § 37-7-611 is not enforceable.

Final Judgment will be entered.

SO ORDERED, this is the 1st day of April, 1991.

/S/ Rhesa H. Barksdale
UNITED STATES CIRCUIT JUDGE

/S/ Tom S. Lee
UNITED STATES DISTRICT JUDGE

/S/ Henry T. Wingate
UNITED STATES DISTRICT JUDGE

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[8] The practical effect of this holding is another matter. The amendments to § 21-1-59 provided that the school district in the annexed area will not be affected without consent from the county school board; the amendments to § 21-1-59 were an exception tot he automatic extension provision of § 37-7-611. Section 37-1-103, which has been precleared, provides for the same procedure as the 1977 and 1978 amendments to § 21-1-59; and § 37-7-611's repeal has been precleared.

Furthermore, the intervenors contend that we must consider the racial impact and the potential for interference with existing desegregation orders of any relief we grant under § 5. Even it is were proper for us to consider such issues in a preclearance case, § 37-7-103, precleared in 1986, provides for the same result as the amendments in issue to § 21-1-59 which have not been precleared.

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No. 90-1861

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

GREENVILLE PUBLIC SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, *et al.*,
Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Mississippi

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PETITIONERS' REPLY BRIEF

PERRY SANSING
(Counsel of Record)
HOLMES S. ADAMS
BRUNINI, GRANTHAM, GROWER & HEWES
1400 Trustmark Building
Post Office Drawer 119
Jackson, Mississippi 39205
(601) 948-3101

CLELL G. WARD
MCLEMORE & WARD
525 North Broadway
Post Office Box 575
Greenville, Mississippi 38701

Counsel for Petitioners

July 18, 1991

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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IN THE

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No. 90-1861

GREENVILLE PUBLIC SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF

In opposing the petition for certiorari, Respondents make three primary arguments. First, Respondents contend that *Morris v. Gressette*, 432 U.S. 491 (1977), states the controlling legal principle applicable to this petition. Second, they assert that the main issue presented for review is essentially factual. Finally, Respondents argue the repeal of Miss. Code Ann. § 37-7-611 is not subject to § 5 of the Voting Rights Act.

It is equally important to highlight what Respondents do not say. They do not argue that the State of Mississippi specifically identified the voting change effected by the repeal of § 37-7-611 in its July, 1986 submission. In fact, Respondents suggest that the State did not identify the repealer to the Attorney General because the State did not initially consider

the repeal to affect voting. (pp.13-14, 23) Respondents also do not claim that the Attorney General actually reviewed this voting change in response to the 1986 submission.

Respondents nevertheless maintain the voting change was precleared because the Attorney General failed to object to the 1986 submission within 60 days even though the change was neither specifically identified in the submission nor actually considered or evaluated by the Attorney General. This position ignores the principles established in *McCain v. Lybrand*, 465 U.S. 236 (1984), and recently reaffirmed in *Clark v. Roemer*, 59 U.S.L.W. 4583 (U.S. June 3, 1991), regarding the obligations of a state to identify with specificity the voting changes it wishes precleared by the Attorney General.

I.

Morris v. Gressette holds that a covered jurisdiction receives administrative preclearance "once it has (i) filed a complete submission with the Attorney General, and (ii) received no objection from that office within 60 days." 432 U.S. at 502. *Morris* does not however, address the issue decided in *McCain* and *Clark* and presented by this petition: whether a voting change was actually submitted to, and evaluated by, the Attorney General for preclearance on a particular occasion. *McCain* teaches that if a state submits some but not all of the features of an electoral scheme, "the Attorney General's failure to object to the submission would not constitute preclearance of elements in the scheme that were not submitted." 465 U.S. at 256 n.28 (citing *Morris*, 432 U.S. at 504). A voting change is not identified and a submission is not com-

plete simply because the state uses phrases such as "the complete act is submitted for review" or the act "is submitted in its entirety." App. 35a. Rather, a submission is proper only if the *voting change* is sufficiently identified to put the Attorney General on notice that review of the particular change is sought. *See Clark*, 59 U.S.L.W. at 4586.

In arguing that the 1986 submission was complete and unambiguous Respondents merely repeat the holding of the Mississippi Supreme Court. (pp.12-14) Yet, the state court and Respondents acknowledge that the voting change was not specifically identified in the 1986 submission. *See* App. 4a (Section 47 of the Uniform School Law was "not among the highlighted sections but part of the package."); Respondents' brief, p.13 ("We believe the [State] specifically brought to the attention of the [Attorney General] only those sections of the Uniform School Law which [the State] *perceived* as affecting voting."). The failure to identify a voting change in a submission is fatal to any contention that the change was submitted to or precleared by the Attorney General. *See Clark*, 59 U.S.L.W. at 4585-86.

In *Clark*, the Court concluded the district court's ruling was in conflict with *McCain* and subverted the efficacy of administrative preclearance under § 5. *Id.* at 4585. In reaffirming *McCain*, the Court stated:

> We made clear that the submission of legislation for administrative preclearance under § 5 defines the scope of the preclearance request. Under normal circumstances, a submission pertains only to identified changes in that legislation. We established also that any

> ambiguity in the scope of a preclearance request must be resolved against the submitting authority.

Id. (citation omitted).

The Court reiterated the presumption that the Attorney General reviews only those voting changes identified by the state in a submission. "A request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones thus cannot be considered an adequate submission of the latter practices." *Id.* at 4586 (quoting *McCain*, 465 U.S. at 256-57). The Court emphasized that a state "must identify with specificity each change that it wishes the Attorney General to consider." 59 U.S.L.W. at 4586. *Clark* squarely rejected the notion adopted by the state supreme court, App. 14a, that a state can obtain preclearance by implication. 59 U.S.L.W. at 4586.

Clark recognizes the adverse effect of any other approach on the Attorney General's responsibilities under § 5: "The requirement that the State identify each change is necessary if the Attorney General is to perform his preclearance duties under § 5." *Id.* Like the lower courts in *McCain* and *Clark*, the Mississippi Supreme Court's decision effectively imposes on the Attorney General an obligation to identify voting changes in a state's § 5 submission. *Clark* rejected this reasoning because it "would add to the Attorney General's already redoubtable obligations the additional duty to research each submission to ensure that all earlier unsubmitted changes had been brought to light." *Id.* The reasons for granting certiorari stated in the petition in this case mirror the rationale for the Court's decision in *Clark*. The Court should grant

review because of the obvious inconsistency between the state court's decision and *Clark*.

II.

Although Respondents argue that certiorari should be denied because the petition presents only a question of fact, they concede the state court held "*as a matter of a law on undisputed facts* there had been a 'complete submission' of" the repealer of § 37-7-611. (p.16) Based on *Clark* and *McCain*, the state court's decision that the Attorney General's approval of certain identified voting changes constituted approval of other unidentified voting changes was erroneous as a matter of law. The factual finding made by the district courts in *Clark*, 59 U.S.L.W. at 4585, and *McCain*, 465 U.S. at 257-58—that the Attorney General actually considered the voting change in issue—was not made by the Mississippi Supreme Court. Rather, the state court held that the Attorney General's failure to object to any part of the July, 1986 submission, including an unidentified voting change, constituted preclearance by *operation of law* under the principle announced in *Morris v. Gressette*.

III.

Respondents devote a significant portion of their brief to the question whether the repeal of § 37-7-611 is subject to § 5 (pp.14 n.15, 16-21), but their position has been rejected by each of the courts that have addressed this question. By reaching the preclearance question, the Mississippi Supreme Court necessarily concluded the repeal of § 37-7-611 was subject to § 5. In addition, the three-judge district court in *Dupree v. Mabus*, No. H90-0043(W) (S.D. Miss. April 2, 1991),

appeal docketed sub nom. Dupree v. Moore, 60 U.S.L.W. 3006 (U.S. June 26, 1991) (No. 90-1977), upon which Respondents rely, expressly held that the repeal of § 37-7-611 was subject to § 5. App. 19b-21b.

Respondents suggest "a simple ban on implementation of the *voting change*" in issue would present no "life or death problem," provided the school boundaries did not change. (p.17) In effect, Respondents contend the repeal of § 37-7-611 could be enforced in part (by not disturbing school boundary lines) and enjoined in part (by precluding newly annexed residents from voting in suburban school district elections). On the one hand, Respondents are willing to sacrifice the right of residents in the portion of the school district annexed by the city to vote in Western Line school board elections. (p.17) On the other hand, they recognize the "direct interest" residents of a school district have in selection of school board members because school boards "control the education of their children and determine the annual millage levy for school purposes." (p.14 n.15)

Respondents' position reflects a misunderstanding of the voting change effected by the repeal of § 37-7-611. The change in voting arises because, as the Attorney General found in his March 31, 1989 objection letter, the repealer operates to freeze municipal school district boundaries and creates "a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board." App. 141a. Moreover, the repeal of § 37-7-611 involved "the revision of political boundary lines based on race which . . . is not permitted under § 5." App. 176a.

IV.

The remaining arguments raised by Respondents merit brief mention.

(1) The statements in Respondents' brief concerning the application of § 37-7-611 prior to 1986 (p.6), the justification for the repeal of § 37-7-611 (pp.6-7), and the development of Mississippi's present-day public school system (pp.4-5) were neither addressed by nor properly before the Mississippi Supreme Court when it exercised the authority granted under *Hathorn v. Lovorn*, 457 U.S. 255 (1982), to decide the voting rights issue. They are equally irrelevant to the question whether certiorari should be granted.

(2) Contrary to Respondents' assertions (p.6), Mississippi law requires that municipal annexations be reasonable. *City of Greenville v. Farmers, Inc.*, 513 So. 2d 932, 940-41 (Miss. 1987). State law provides "a mechanism whereby all political boundary disputes relating to a proposed annexation, whether they concern school or other matters, may be aired and considered in a proceeding conducted by the chancery court." App. 140a.

(3) Respondents' allegations regarding Petitioners' motive for filing this lawsuit (pp.4, 18, 21 & nn.1, 17) were rejected by the state supreme court, which reversed the trial court's award of Rule 11 sanctions and noted that Petitioners acted "prudently" based on the "very real dispute over the status of the school districts in this case." App. 20a & n.8.

(4) Respondents strenuously protest (pp.1-3) the characterization of their school district as suburban. "Suburban" means "characteristic of the suburbs or suburbanites: variously connoting a combination of ru-

ral and urban features." Webster's New Universal Unabridged Dictionary 1818 (2d ed. 1983). Apart from satisfying the definition of a suburban school district, Western Line occupies the role of the neighboring school district that the Attorney General concluded would oppose any expansion by the city school district. App. 140a.

(5) Respondents suggest that if the Petitioners prevail and expand into the portion of the Western Line district annexed by the City of Greenville, Western Line will lose "about 55%" of its tax base. (p.18) In fact, this loss would have occurred only if the City's proposed annexation had been approved in its entirety. The Mississippi Supreme Court excluded from the annexed territory Mississippi Power & Light Company's electric generating plant and Comet Delta's rice processing facility, which represented the major portion of the potential tax loss to Western Line. *Farmers, Inc.*, 513 So. 2d at 939, 942.

Petitioners mention these arguments only to correct the record. The comments by Respondents on these subjects have no relevance to the obligation of the State of Mississippi to comply with the Voting Rights Act by obtaining preclearance of the voting change effected by the repeal of § 37-7-611 before implementing that change.

This petition concerns a decision by a state court that conflicts with decisions of this Court and undermines the administration of § 5. The petition for certiorari should be granted and the decision should be reversed.

Respectfully submitted,

PERRY SANSING
(Counsel of Record)
HOLMES S. ADAMS
BRUNINI, GRANTHAM, GROWER & HEWES
1400 Trustmark Building
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: (601)948-3101

CLELL G. WARD
MCLEMORE & WARD
525 North Broadway
Post Office Box 575
Greenville, Mississippi 38701
(601)332-4155

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In the Supreme Court of the United States

OCTOBER TERM, 1991

GREENVILLE PUBLIC SCHOOL DISTRICT, ET AL.,
PETITIONERS

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT,
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

DAVID O. SIMON
Acting Deputy Assistant Attorney General

JAMES A. FELDMAN
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
MIRIAM R. EISENSTEIN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the state court had jurisdiction over the claim that the statute at issue in this case had not been precleared under Section 5 of the Voting Rights Act.

2. Whether, under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, the Attorney General's preclearance of voting changes identified in a submission by a covered jurisdiction operates to preclear other changes made by the same legislation but not specifically identified in the submission.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1861

GREENVILLE PUBLIC SCHOOL DISTRICT, ET AL., PETITIONERS

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This submission responds to the Court's invitation to the Solicitor General to file a brief expressing the views of the United States.[1]

STATEMENT

This case arises from the enactment by the State of Mississippi of a comprehensive revision to its education laws, which, *inter alia*, both repealed a former provision governing the modification of school district boundaries when territory is annexed by a city and enacted a new provision generally governing alterations of school district boundaries. The question presented is whether the repeal of the former provision was precleared pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

[1] In response to the Court's invitation, we are today filing a brief expressing the views of the United States in *Dupree* v. *Moore*, No. 90-1977. That case presents the same substantive question as does the instant case, but does not present the jurisdictional question presented here. We have provided the parties in this case with a copy of our brief in No. 90-1977.

1. Mississippi cities are permitted by Miss. Code Ann. §§ 21-1-29 *et seq.* (1990), to annex territory located outside their boundaries by filing a petition in chancery court. Prior to 1986, the status of city school districts, in the event of such a municipal expansion, was governed by Miss. Code Ann. § 37-7-611 (1972). Pet. App. 109a-111a. Under Section 37-7-611, when a city annexed territory, the municipal school district automatically expanded to become coextensive with the city limits. In addition to this provision for automatic expansion of municipal school district boundaries, Section 37-7-611 and other provisions of Mississippi law also provided for alteration of municipal school district boundaries with the consent of the school boards involved.[2] The school board of a municipal school district is generally chosen by the city's elected governing body. Miss. Code Ann. § 37-7-203 (1990).[3]

2. In 1986, the State legislature enacted the Uniform School Law, S.B. No. 2117, ch. 492, omnibus legislation revising the entire state education code. Among the many changes effected by this bill, Section 47 specifically repealed Section 37-7-611—the statute that provided for automatic incorporation of annexed territory into municipal school districts—as well as 22 other provisions of state law. Pet. App. 75a. In

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[2] Counties were treated differently from cities under Mississippi law. Prior to 1986, non-municipal school district boundaries could be altered by action of county boards of education, with the approval of a state education commission. See Miss. Code Ann. §§ 37-7-103, 37-7-113 (1972); Pet. App. 76a-77a, 87a-88a.

[3] Where the municipal school district includes territory outside the city limits, Mississippi law permits one or two extra school board members to be elected by the residents of the added territory, the number depending upon the proportion of the pupils accounted for by the added territory. Miss. Code Ann. § 37-7-203 (1990). Members of non-municipal school

addition, Section 52 of the Uniform School Law amended Miss Code Ann. § 37-7-103 (1972) to give the board of each school district—municipal or otherwise—authority to alter its boundaries, with the consent of any neighboring school board whose district boundaries would be affected by the change. Pet. App. 76a-77a. One of the effects of the repeal of Section 37-7-611 and the amendment of Section 37-7-103 was that, when a city now annexed neighboring territory, the municipal school district would expand into the annexed territory only with the consent of the school board governing that territory.

3. On July 22, 1986, the State of Mississippi sent the Uniform School Law to the Attorney General for preclearance under Section 5. Pet. App. 32a-46a. The State's submission included a letter from the state attorney general stating that the " 'Mississippi Uniform School Law of 1986' * * * is submitted * * * in its entirety." Pet. App. 35a. The letter continued: "For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review." *Ibid.*

Section 51.25(b) of the regulations governing Section 5 submissions provides that "[i]f the change affecting voting is not readily apparent on the face of the document provided * * * or is not embodied in a document," the submission must contain "a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to vot-

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boards are generally elected by county voters. Miss. Code Ann. § 37-7-207 (1990).

ing." 28 C.F.R. 51.25(b) (1986), Pet. App. 180a.[4] Accordingly, in a portion of the submission letter headed "28 C.F.R. 51.25(b)," the State specifically described 13 of the 205 sections of the bill. Pet. App. 35a-41a.

Section 47 of the bill, which repealed Section 37-7-611, was not specifically described in the submission letter. The submission letter thus did not state that pre-existing law provided for automatic expansion of municipal school districts when a city annexed adjoining territory, nor did it address the effect of the Uniform School Law on such automatic, non-consensual expansions.

Section 52 of the bill was among the 13 sections specifically described. The submission letter stated that Section 52 provides that "the school board of any school district may * * * alter the boundaries of any such district" or "with the consent of the school board of the district involved may add to [its] school district any part of the school district adjoining same or may detach territory from such school district and annex same to an adjoining district." Pet. App. 37a. The submission letter explained that, under pre-existing law, a county board of education could "create, alter or abolish any school districts of such county, other than the municipal separate school districts." Pet. App. 37a. Where a municipal school district was involved, the letter added that, under pre-existing law, "the county board of education with the consent of the board of trustees of the municipal separate school district involved may add to such municipal separate school districts any part of the county adjoining same." *Ibid.* The explanation of Section 52 thus explained the previous method for consensual expansion of municipal school districts,

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[4] Substantially the same instructions have been in effect as guidelines since 1971. See 36 Fed. Reg. 18,186-18,190 (1971).

but did not mention the previous method for automatic expansion of municipal school district boundaries when the municipality annexes territory.

In addition to the letter, the State also included with its submission a certified copy of the bill and a looseleaf notebook entitled "Senate Bill Number 2117 —Comparison of Current Law and New Law." Pet. App. 47a-108a (notebook); see Pet. App. 35a. The 467-page notebook contained the text of each provision of the Uniform School Law, together with photocopied pages containing provisions of prior state law, if any, that were amended by that provision. The text of Section 47 appeared in the enclosed bill and in the notebook, but the texts of the 23 provisions of law repealed by Section 47 were not included in the notebook. The text of Section 47 simply states that 23 cited provisions of state law—including Section 37-7-611—that "provide for the creation and operation of municipal separate school districts" are repealed. Pet. App. 75a.

On August 29, 1986, the State was informed by letter that the Atorney General of the United States did "not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986) as identified in your July 22, 1986, letter." Pet. App. 112a.

4. On December 30, 1987, the State sent the Attorney General of the United States a new document entitled "Submission of Chapter 492, Section 47: [Miss. Code Ann. § 37-7-611 (1972)] of the 1986 Laws of Mississippi." Pet. App. 114a (brackets in original). That submission noted that "[t]he major part of Chapter 492, as it deals with the Voting Rights Act of 1965 * * * has already been precleared by the United States Justice Department on August 29, 1986." Pet. App. 117a.[5] The submission

[5] The 1987 submission letter—like the 1986 submission—included the boilerplate statements that "in making this sub-

went on to explain that Section 47 repeals Section 37-7-611, and to outline the nature of that change. Distinguishing Section 47 from Section 52, the submission noted:

> It is the automatic expansion of the school district which had been repealed by [Section 47]. The option to expand, however, is not forclosed [*sic*]. Section 52, of the Chapter 492 of the 1986 Laws of Mississippi (precleared by the United States Justice Department on August 29, 1986) provides that the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such school district.

Pet. App. 120a. On February 28, 1988, the Attorney General requested additional information with regard to the submission of Section 47. Pet. App. 125a-129a. The State responded almost a year later, by letter of January 27, 1989. Pet. App. 130a-138a.[6]

On March 31, 1989, the Attorney General interposed an objection to Section 47. Pet. App. 139a-142a. The Attorney General concluded that repealing the automatic annexation provision in Section 37-7-611 would be likely to "create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi

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mission the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether the instant submission is subject to the preclearance requirements of Section 5." Pet. App. 116a; see Pet. App. 34a. The first time the State specifically acknowledged any uncertainty surrounding the Section 5 status of Section 47 appears to have been in the State's request for reconsideration submitted to the Attorney General in January 1990. See p. 7, *infra*.

[6] This letter again acknowledged that the Attorney General had precleared in 1986 the "particular sections identified in our July 22, 1986 submission." Pet. App. 130a.

law, appoints the city school board." Pet. App. 141a. The Attorney General noted that the State had provided "no explanation for the establishment of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters." *Ibid.*

5. On January 12, 1990, the State formally requested the Attorney General to reconsider his objection. Pet. App. 143a-172a. In the request, the State contended for the first time that the entire 1986 statute had actually been submitted and precleared in 1986, and that the Attorney General lacked "authority * * * to grant limited preclearance" of a law "submitted in its entirety." Pet. App. 149a. The State claimed that, "[w]ith respect to Section 47, even though the repealed sections were not set out, they were sufficiently described as providing for the creation and operation of municipal separate school districts," Pet. App. 148a, and that the Attorney General's failure to object to Section 47 in August 1986 accordingly amounted to preclearance of that provision. Pet. App. 149a.

The State was advised by letter on May 25, 1990, that the Attorney General would not withdraw the objection. Pet. App. 173a-177a. In response to the State's contention that the change had necessarily been precleared in 1986, the letter noted relevant case law and stated:

> Section 5, as interpreted by the courts and our submission guidelines, plainly fixed the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing * * * that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made.

Pet. App. 175a.[7]

6. In 1982, the City of Greenville petitioned the state chancery court to annex approximately 19 square miles of territory. The annexation was finally approved by the Mississippi Supreme Court in 1987. Pet. App. 28a-29a. A portion of the annexed area had been part of the Western Line Consolidated School District. Pet. App. 29a. Under Section 37-7-611, the annexation would automatically extend the boundaries of the City's school district to include the annexed territory.

In February 1988, petitioners, the Greenville Public School District and its five board members, filed this suit for declaratory relief in the Circuit Court for Washington County, Mississippi. Named as defendants were the Western Line Consolidated School District and the members of its board of trustees in their official capacities. Pet. App. 27a. The complaint alleged that Section 37-7-611 governed the expansion of a municipal school district when a city annexed territory, because the repeal of Section 37-7-611 by Section 47 of the Uniform School Law had never been precleared under Section 5 of the Voting Rights Act. Pet. App. 29a. Accordingly, petitioners sought declarations that:

> a. The repeal of Section 37-7-611 of the Mississippi Code of 1972 by Section 47 of the Uni-

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[7] The letter also cited, without discussing, 28 C.F.R. 51.26(d) and 51.27, as in accord with the "well-established" requirement that a voting change must be submitted in an "unambiguous and recordable manner." Pet. App. 174a. 28 C.F.R. 51.27 provides that a copy of any repealed statute should be included with a Section 5 submission of the repealing legislation. That specific regulation was not in effect at the time of the State's submission of the Uniform School Law in 1986. See 28 C.F.R. 51.1 *et seq.* (1986). The regulations in effect in 1986 did, however, require the submitting jurisdiction to identify with specificity the voting changes for which preclearance was sought. 28 C.F.R. 51.25(b); see pp. 3-4, *supra*.

> form School Law is void and of no effect until it has been precleared by the Attorney General of the United States.
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> b. Section 37-7-103 of the Mississippi Code of 1972, as amended [by Section 52 of the Uniform School Law], is not in conflict with Section 37-7-611.

Pet. App. 31a.

The trial court granted respondents' motion for summary judgment, on the ground that it had no jurisdiction to decide petitioners' Section 5 claim. Pet. App. 24a-26a. The court held that "[e]xclusive jurisdiction of matters within the ambit of the Voting Rights [Act] of 1965 is vested in the United States District Court for the District of Columbia and/or the Attorney General of the United States, and this Court has no jurisdiction to rule in these areas." Pet. App. 25a.

6. On December 12, 1990, the Mississippi Supreme Court reversed. Pet. App. 1a-21a. The court held that it had concurrent jurisdiction with local, three-judge federal district courts to determine whether the repeal of Section 37-7-611 had been precleared pursuant to Section 5 of the Voting Rights Act. Pet. App. 5a-7a. The court noted "the presumption of concurrent jurisdiction," and referred to the fact that "[s]tate courts have inherent authority, and are presumptively competent, to adjudicate claims arising under the laws of the United States." Pet. App. 5a (citing *Yellow Freight Sys., Inc.* v. *Donnelly*, 110 S. Ct. 1566 (1990); *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473 (1981); *Claflin* v. *Houseman*, 93 U.S. 130, 136-137 (1876)). But the court also referred to its authority to decide issues concerning the interpretation of federal statutes that arise collaterally, even where decision of claims arising under those statutes is entrusted ex-

clusively to the federal courts. Pet. App. 5a (citing *Hathorn* v. *Lovorn*, 457 U.S. 255, 266 (1982)). The court thus did not expressly state whether it viewed the Section 5 claim in this case to be collateral to a state-law claim.

Turning to the merits, the court held that the Attorney General had in effect precleared the repeal of Section 37-7-611 when he precleared Section 52 of the Uniform School Law, the section providing that any school district may alter its boundaries with consent of the school board of any other affected school district. Pet. App. 7a-21a. According to the court, "[e]ven assuming § 37-7-611 was not specifically repealed [by Section 47 of the Uniform School Law], it was implicitly repealed by [Section 52]." Pet. App. 14a. In the court's view, Section 52 was "a subsequent enactment covering a field of operation co-existent with [Section 37-7-611]" that "cannot by any reasonable construction be given effect while the prior law remains in existence because of irreconcilable conflict between the two acts." Pet. App. 14a. In such a situation, the court held that a "repeal * * * arise[s] by necessary implication from the enactment of a subsequent act." *Ibid.* In reaching its conclusion, the court did not purport to rely on any indication that the submission of the Uniform School Law had informed the Attorney General, at the time of the preclearance of Section 52, that Mississippi law had previously provided for automatic expansion of a municipal school district when a municipality annexed territory, nor that such provisions for automatic expansion had been repealed expressly by Section 47 or impliedly by Section 52 of the Uniform School Law.[8]

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[8] Subsequent to the decision of the Mississippi Supreme Court in this case, on April 2, 1991, the three-judge district

DISCUSSION

The Section 5 "coverage" issue in this case is identical to the issue in *Dupree* v. *Moore*, No. 90-1977, in which a three-judge federal district court used similar reasoning to reach the same conclusion as did the Mississippi Supreme Court here. The decisions in *Dupree* and in this case both were filed prior to this Court's decision in *Clark* v. *Roemer*, 111 S. Ct. 2096 (1991). As explained in our *amicus* submission in *Dupree*, *Clark* reaffirmed principles that are inconsistent with the result and reasoning adopted by the lower courts in both cases. Accordingly, we suggested in *Dupree* that it would be appropriate to vacate the decision below in that case and remand for reconsideration in light of *Clark*.

We do not believe such a disposition would be appropriate in this case, however, because this case presents, in addition to the Section 5 coverage question, a prior issue: whether the Mississippi Supreme Court had jurisdiction over petitioners' Section 5 claim. In our view, there is substantial doubt that the state court decided that question correctly. However, the jurisdictional issue was not litigated by the parties in this case and has not been presented in the petition for certiorari or the brief in opposition. Nor does the Mississippi Supreme Court's jurisdictional holding appear to conflict with any decision of any other state court of last resort or federal three-judge court. Accordingly, it would be appropriate in this case simply to deny the petition for certiorari. As explained below, that disposition would not be likely to control future cases raising the

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court in *Dupree* v. *Moore*, No. 90-1977, see note 1, *supra*, reached the same conclusion, holding that the Attorney General had precleared the 1986 repeal of Section 37-7-611.

same substantive Section 5 issue, on which we believe the Mississippi Supreme Court erred.

1. In *Hathorn* v. *Lovorn*, 457 U.S. 255 (1982), this Court held that a state court cannot refuse to apply Section 5 of the Voting Rights Act when the Section 5 issue arises collaterally in an action brought under state law. The plaintiffs in *Hathorn* originally brought suit in state court in 1975, seeking to enforce a 1964 Mississippi state statute providing for election of boards of trustees of municipal school districts from the county supervisors districts, rather than at-large from the county as a whole. The statute had long been neglected because of doubts about its validity under state law. After the Mississippi Supreme Court decided that the statute, with some excisions, was valid and enforceable as a matter of state law, defendants moved for reconsideration on the ground that it had never been precleared under the Section 5 of the Voting Rights Act and was therefore unenforceable. After further state court proceedings, the Mississippi Supreme Court ordered elections to be held, notwithstanding the fact that the statute had never been precleared. See 457 U.S. at 258-261.

This Court reversed, rejecting the claim that "the Voting Rights Act deprives state courts of the power even to decide whether § 5 applies to a proposed change in voting procedures." 457 U.S. at 265-266. The Court relied on the principal that "even a finding of exclusive federal jursdiction over claims arising under a federal statute usually 'will not prevent a state court from deciding a federal question collaterally.'" 457 U.S. at 266 (quoting *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 483 n.12 (1981)). The Court noted that "[i]t is possible that [Sections 5 and 12(f) of the Voting Rights Act, 42 U.S.C. 1973c, 1973j(f),] grant the federal courts exclusive

jurisdiction over 'action[s] under' § 5 or 'proceedings instituted pursuant' to § 12." 457 U.S. at 267-268. Nonetheless, the Court declined to decide the question whether exclusive jurisdiction over such suits was vested in three-judge federal courts, holding instead that "at least when the issue arises collaterally, state courts may decide whether a proposed change in election procedure requires preclearance under § 5." 457 U.S. at 268.

2. Although *Hathorn* held that state courts may decide Section 5 questions that arise collaterally in state-court actions, this Court has not had occasion to decide whether state courts possess concurrent jurisdiction over a complaint directly raising a Section 5 coverage claim. Nor does the question arise frequently in the lower federal or state courts.

Most of the post-*Hathorn* cases in which state courts have considered Section 5 questions have plainly involved collateral issues and are thus squarely controlled by the holding in *Hathorn*.[9] See, *e.g.*, *Dennis* v. *Pendley*, 518 So. 2d 688 (Ala. 1987) (per curiam) (Section 5 issue in case involving compliance with state-law election requirements); *Harrison* v. *State*, 687 P. 2d 332, 344-346 (Alaska Ct. App. 1984) (defendant in criminal prosecution for violating local liquor ordinance alleged that referendum at which ordi-

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[9] Prior to *Hathorn*, the issue had arisen in only a few cases. See *Wall* v. *Board of Elections*, 250 S.E.2d 408, 412 (Ga. 1978) (challenge on Section 5 and state statutory and constitutional grounds; Section 5 challenge held moot because elections had been precleared); *O'Neal v. Simpson*, 350 So. 2d 998, 1000-1001 (Miss. 1977) (in general challenge to election results on state and federal grounds, court holds that new statute regulating assistance for voters had not been preclared); *Ortiz* v. *Thompson*, 604 S.W.2d 443, 446 (Tex. Civ. App. 1980) (no state court jurisdiction over claims arising under the Voting Rights Act); *Beatty* v. *Esposito*, 411 F. Supp. 107, 111 (E.D.N.Y. 1976) (reaching same conclusion).

nance was passed had not been precleared); *Phillips* v. *State*, 399 S.E. 2d 234, 236-237 (Ga. Ct. App. 1990) (criminal case attacking conviction on ground that judge was elected in violation of Voting Rights Act); *Nomey* v. *Jackson Parish Police Jury*, 343 So. 2d 315, 317-318 (La. Ct. App. 1977) (Section 5 issue arising in suit attacking local election on state law and federal constitutional grounds); *State* v. *Albano*, 722 P. 2d 453, 456 (Haw. 1986) (defendant in criminal prosecution for election fraud alleged that statute under which he was prosecuted had not been precleared).[10]

The only other cases of which we are aware all arose in Mississippi state courts.[11] Since its decision here, the Mississippi Supreme Court has made clear that it believes that it has concurrent jurisdiction

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[10] In *Mitchell* v. *City of Prichard*, 538 So. 2d 1, 2 (Ala. 1988), the court stated the question presented as "whether a state court has subject matter jurisdiction over a case involving the interpretation and application of the federal Voting Rights Act when the issues of the case arise collaterally to a claim brought under state law." Notwithstanding the fact that *Hathorn* answered that question in the affirmative, the Alabama Supreme Court held that "cases involving the interpretation of the preclearance requirements of Section 5 of the federal Voting Rights Act are within the exclusive jurisdiction of the federal courts" and dismissed the case. 538 So. 2d at 2.

[11] In three recent annexation cases, the Mississippi Supreme Court reached the merits, under state law, of the annexation or other subsidiary issue in the case and cited *Hathorn* v. *Lovorn* for the proposition that, "[u]ntil preclearance is forthcoming, [the state court] must enforce the law as it existed before the objected to change." *Harrison County* v. *City of Gulfport*, 557 So. 2d 780, 788 (Miss. 1990); see *In re Enlargement of Corporate Boundaries*, 551 So. 2d 890, 895 (Miss. 1989); *In re Extension of the Boundaries*, 551 So. 2d 861, 868 n.5 (Miss. 1989). See also *Bassett* v. *Town of Taylorsville*, 542 So. 2d 918, 920 n.3 (Miss. 1989); *Sperry Rand Corp.* v. *City of Jackson*, 248 So. 2d 810, 812 (Miss. 1971).

over Section 5 coverage cases. In *Adams County Election Comm'n* v. *Sanders*, 586 So. 2d 829 (Miss. 1991), the plaintiffs sought to enjoin a local primary election on the ground that the redistricting plan under which the election was held had not been precleared.[12] A lower state court granted a preliminary injunction, but the state Supreme Court dissolved it after balancing the equities. With respect to the jurisdictional issue, the court cited its decision in this case for the proposition that "state courts have concurrent jurisdiction with the federal courts to decide whether § 5 of the Voting Rights Act applies to contemplated changes in election procedures." 586 So. 2d at 831.

3. Although neither party raised the jurisdictional issue before this Court, the issue of concurrent state jurisdiction over Section 5 claims that are central to the legal issues in a case—as opposed to being merely collateral to state-law questions—appears to be squarely raised by the facts of this case. The plaintiff sought two declarations: first, that "[t]he repeal of Section 37-7-611 * * * is void and of no effect until it has been precleared by the Attorney General of the United States," and second, that "Section 37-7-103 [Section 52 of the Uniform School Law] * * * is not in conflict with Section 37-7-611." Pet. App. 31a.

The request for the first declaration directly raises the Section 5 coverage issue and appears to involve no question of state law. If that were the only issue in the case, there could be no argument that the Section 5 issue is merely collateral to decision of some state-law question, and the case would squarely present the question whether state courts have concurrent jurisdiction over non-collateral Section 5 claims.

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[12] The plaintiffs also sought a declaration that the districts violated the constitutional one person, one vote standard. 586 So. 2d at 830.

The request for the second declaration appears on its face to involve a question of state law. Yet, even if it does, the Section 5 issue in this case is not "collateral" to the state-law question. Indeed, the question of how Sections 37-7-611 and Section 52 of the Uniform School Law co-exist arises only if it is determined that the repeal of Section 37-7-611 was not effective, *i.e.*, the repeal was not precleared. Thus, the state-law question concerning whether the two statutes are consistent with each other appears, if anything, to be collateral to the Section 5 question in this case.

4. We have substantial doubt that the Mississippi Supreme Court's holding that it has concurrent jurisdiction over Section 5 coverage cases is correct. As this Court has repeatedly held, "the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990). State courts are thus "presumptively competent[] to adjudicate claims arising under the laws of the United States." *Ibid.* That presumption can be rebutted only "if Congress affirmatively ousts the state courts of jurisdiction" in one of three ways: "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 478 (1981).

Section 5 of the Voting Rights Act provides that "[any action] under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court." 42 U.S.C. 1973c. That language mandates that jurisdiction over "any action under" Section 5 be vested in three-

judge federal courts. In our view, exercise of state court jurisdiction over such claims is accordingly precluded.[13]

That conclusion is reinforced by the congressional purposes underlying Section 5. A Section 5 coverage case always draws into question the validity of a state law. Because resolution of the state law's validity involves "a potential for substantial interference with governmental administration," *Allen*, 393 U.S. at 562, Congress determined that such actions should be decided in the first instance by a panel of three federal judges, with direct appeal to this Court. Only by providing for such a direct appeal could Congress assure that the validity of the state statute would be determined finally and authoritatively.

To permit Section 5 cases to be brought in state court would defeat that purpose. Even after a state trial court, intermediate appellate court (if any), and state supreme court passed on the Section 5 issue, the preclearance status of the state statute would remain open in subsequent litigation in federal court, since decisions of state courts on federal questions are not binding on the federal courts.[14] See, *e.g.*, *Stand-*

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[13] In *Allen* v. *State Bd. of Elections*, 393 U.S. 544 (1969), the Court concluded that that there are three kinds of actions under Section 5—actions brought by a State concerning the constitutionality of Section 5, actions brought by the State to determine whether a particular statute has a discriminatory purpose or effect, and actions brought by a private plaintiff to determine whether a statute is enforceable. 393 U.S. at 558-560. The Court determined that all three types of actions require a three-judge court, but only the first two must be litigated in the District Court for the District of Columbia.

[14] Because the state court's resolution of the Section 5 question would not be binding on federal courts, to permit state courts to exercise concurrent jurisdiction over Section 5 cases also threatens "to breed conflicts between the state courts and

ard Oil Co. v. *Johnson*, 316 U.S. 481, 483 (1942). Accordingly, another plaintiff could bring an identical challenge to the same state statute in federal court, and ultimate decision on the statute's validity would be postponed until this Court decided the question on appeal. If this Court reviewed the state court's resolution of the Section 5 question on a writ of certiorari, a final resolution would be obtained without recourse to federal district court. But that resolution would be dependent on this Court exercising its discretion in granting a petition for a writ of certiorari and would defeat Congress's purpose in providing for direct review in this Court by appeal, thus guaranteeing authoritative resolution of the validity of the state statute.

The conclusion that Congress granted exclusive federal jurisdiction over Section 5 cases to three-judge federal courts is not at odds with decisions of this Court holding that state courts possess concurrent jurisdiction over other federal claims. For example, in *Yellow Freight System, Inc.* v. *Donnelly*, 494 U.S. 820 (1990), the Court held that state courts have concurrent jurisdiction over Title VII claims. Unlike the mandatory language of Section 5 ("any action under this section shall be heard and determined by a court of three judges"), the Title VII jurisdictional provision merely confers jurisdiction on federal district courts by providing that "[e]ach United States district court * * * shall have jurisdiction of actions brought under this subchapter." 42 U.S.C. 2000e-5(f)(3). Similarly, in *Tafflin* v. *Levitt*, 493 U.S. 455 (1990), the Court held that state courts have concurrent jurisdiction over civil RICO claims. The jurisdictional provision at issue there was even more clearly permissive than that in Title VII, pro-

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the federal district courts sitting within the States." *Hathorn* v. *Lovorn*, 457 U.S. at 271 (Rehnquist, J., dissenting).

viding that "[a]ny person injured in his business or property * * * may sue therefor in any appropriate United States district court." 18 U.S.C. 1964(c). In contrast to the civil RICO statute, Section 5 provides that cases brought thereunder "shall" be heard by a three-judge court and provides for direct review in this Court. To permit concurrent state-court jurisdiction would both contravene the express language of the statute and disserve Congress's purpose of providing for authoritative and speedy decision concerning the validity of state laws brought into question in Section 5 litigation.

5. Despite our doubts concerning the correctness of the Mississippi Supreme Court's jurisdictional holding, however, the issue does not appear to warrant further review at this time. As noted above, that court appears to be the only post-*Hathorn* court to reach the issue of whether there is state court jurisdiction over Section 5 coverage claims that are not merely collateral to state-law issues.[15] Even as to that issue, the court's decision is not without ambiguity concerning whether, in its view, it was exercising general concurrent jurisdiction over Section 5 questions, or whether instead it was relying on *Hathorn*'s holding that state courts have jurisdiction to decide Section 5 coverage issues that are collateral to state-law claims. Finally, neither of the parties has briefed or argued the jurisdictional issue in this case.

If certiorari were denied in this case, it would have the effect of leaving intact the Mississippi Supreme Court's holding that the repeal of Section 37-7-611

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[15] The three-judge federal court in *Dupree* v. *Moore* agreed with the Mississippi Supreme Court's jurisdictional holding in this case, but appears to have rested its discussion on the assumption that the state court's exercise of jurisdiction here was merely collateral and thus governed by *Hathorn*. See 90-1977 J.S. App. 14a-15a.

was precleared. As explained above and in our submission in *Dupree* v. *Moore*, we believe that that holding was erroneous, especially in light of this Court's subsequent decision in *Clark* v. *Roemer*. Nonetheless, that fact alone does not in our view warrant plenary consideration of this case. For the Mississippi Supreme Court's decision here would not preclude further judicial consideration of the claim that Section 37-7-611 should be given effect, even as to the specific expansion of school district boundaries at issue in this case.

First, the decision in this case would not preclude resolution of the same question in litigation between other parties—or in an enforcement action brought by the Attorney General—in federal court.[16] As the Court stated in *Hathorn*, "[p]ersons dissatisfied with a state court's * * * resolution of a § 5 issue in proceedings involving other parties * * * are likely to be able to litigate the issue anew in federal court." *Hathorn* v. *Lovorn*, 457 U.S. at 269 n.23. As noted above, a federal court is not generally bound as a matter of precedent by a state court's resolution of the Section 5 question.

Second, if the substantive Section 5 issue in this case should come before the Mississippi courts again, the precedential weight to be accorded the decision here would be in doubt. Since the decision in this case predated this Court's decision in *Clark* v. *Roemer* by six months, the Mississippi courts would be obligated to reconsider the conclusion in this case in light of the subsequent, and in our view controlling, decision of this Court in *Clark*.

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[16] In fact, the same controversy over the boundaries of the Greenville school district is already at issue in a case pending in federal district court. See *Nickles* v. *Western Line Consol. School Dist.*, No. GC90-45-B-O (N.D. Miss. filed Feb. 22, 1990).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

DAVID O. SIMON
Acting Deputy Assistant Attorney General

JAMES A. FELDMAN
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
MIRIAM R. EISENSTEIN
Attorneys

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